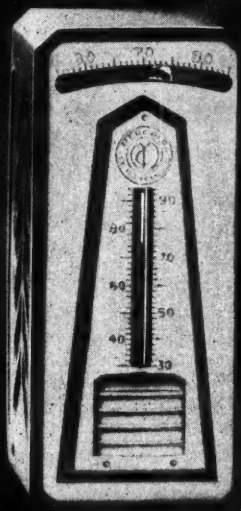
Public Utilities

FORTNIGHTLY

November 25, 1943

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

MERCOID SENSATHERM



AN EXTREMELY SENSITIVE THERMOSTAT

LET'S BE REALISTIC

There are a lot of enchanting promises floating around about a fantastic world we will be living in after the war. Fine—it can't come too soon, but it looks like the demands of rehabilitation will determine the course of events after the costly struggle is over.

The order of things during the postwar period will of necessity, call for rigid economy throughout the entire program of living. It is natural to assume that some changes will be made, and then only where a saving can be effected.

The day dream world is very likely to be out of grasp for a little while to come. People as a whole are not so much concerned about fancy frills or novel ways of doing things as they are about getting back some of the basic comforts now denied by war priorities, and among the first of these is automatic heat—assured by the Mercoid time proven way of efficiency, accuracy and trouble-free performance.

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Public Utilities Fortnightly

VOLUME XXXII *November 25, 1943* NUMBER 11

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

WHEN Benjamin Franklin made his celebrated remark about the certainty of death and taxes, he must have had in mind the peculiar sticking power of taxation. Throughout our national history, and for that matter the history of other nations from the time of antiquity, taxes have always had a tendency to increase and to be rarely removable.

IT was not until the completion of two decades in the twentieth century that the Federal government found it necessary to impose a tax on individual income. But today that is probably its principal source of revenue and the rate of taxation has increased many times over in the little more than two decades in which we have had such taxation. Furthermore, it is probable that we shall never return to the comparatively modest levy on individual or corporate income as it existed in the twenties. Heavy taxation is here to stay, along with a thumping big national debt.

IT follows from this modern emphasis on taxation that Federal, state, and local governments are going to be looking around for more and more opportunities to raise new tax revenues. By the same token, taxing bodies will be less and less disposed to tolerate immunities, preferences, and exemptions which have heretofore existed in various tax applications and this brings up the old problem of tax exemption in the field of public ownership and operation of public utilities.

ERNEST CLIFFORD POTTS

The power to tax has produced a public power anomaly in the Pacific Northwest.

(SEE PAGE 663)

ALFRED M. COOPER

Does the average utility worker really prefer to be employed by the government?

(SEE PAGE 671)

THE opening article in this issue, by ERNEST CLIFFORD POTTS, takes up an interesting phase of this subject which has resulted from the rather unique organization of so-called public utility districts in the states of Washington and Oregon. These districts, which have themselves power to tax, exist independently of other taxing political subdivisions in which they are located. The consequent overlapping of authority has brought a new complication into the already puzzling picture of the problem of public ownership and its relation to local taxes.

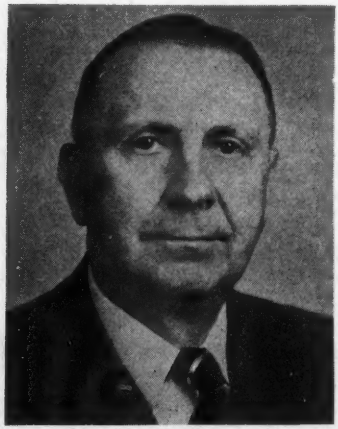
MR. POTTS was formerly a high school teacher in Nebraska following his graduation from Doane College (BA) in that state. After a "dust bowl" experience, he went westward to join the *Boise* (Idaho) *Statesman*, and

then served on the staff of the Portland *Oregonian* for eleven years as reporter and assistant city editor, and financial editor. He is presently the financial editor of the *Oregon Voter* and the author of a number of articles dealing with public ownership operations in the utility field.

WE conclude in this issue (beginning page 677) the 2-part serial on the TVA by J. A. WHITLOW, vice president of the Public Service Company of Oklahoma. Mr. WHITLOW is a graduate of electrical engineering from the University of Missouri and held several engineering posts with the St. Louis and Missouri state governments before joining his present organization in 1923. He is now located at Tulsa.

ALFRED M. COOPER, whose article on the preference of labor for government employment begins on page 671, is a resident of Temecula, California, whose articles on industrial relations have frequently appeared in this magazine and other business and trade publications. MR. COOPER is also the author of several volumes on personnel supervision.

LESLIE CHILDS, whose article on the enforcement of cut-off rules begins on page 686, is a member of the Indiana bar and a graduate of Indiana Law School. He practiced law in Indianapolis until the outbreak of World War I in which he served. Since returning he has engaged in legal writing, and is the author of various booklets on legal subjects



J. A. WHITLOW

The TVA has come of age; but how has it been accomplished?

(SEE PAGE 677)

LESLIE CHILDS

Cutting off utility service can become a grave legal responsibility.

(SEE PAGE 686)

and a number of legal articles which have appeared in trade and professional publications.

WE were interested to note that J. A. Krug, director of the WPB Office of War Utilities, was a pretty early bird in giving his warning (issued November 3rd) against unnecessary Christmas cheer in the form of display lighting during the holidays. Mr. Krug reminded the American public, as of that date, that it had only fifty-four days left *not* to do its Christmas shopping for outdoor ornamental lighting fixtures, street decorations, community Christmas trees, and so forth. The reason, of course, is clear enough. "Government and industry have combined in a nation-wide conservation program," says Mr. Krug, "to save critical fuels and materials necessary to produce and consume electricity." And so it looks as though we shall have to confine our Christmas cheer to the home fires during the coming holidays. Mr. Krug says it is all right to have a Christmas tree inside the home but that the American public ought to let it go at that.

IMPORTANT decisions preprinted from *Public Utilities Reports* may be found in the back of this number.

THE next number of this magazine will be out December 9th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 193–256, from 50 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

RAYMOND MOLEY
Writing in The Wall Street Journal.

"Liberty, like life, needs to be lost only once."

A. L. M. WIGGINS
President, American Bankers Association.

". . . the Federal government has taken possession of almost the last foxholes of freedom."

ROBERT MOSES
Postwar planner for city of Portland, Oregon.

"The chief obstacle to postwar planning is that people still say 'Let's win the war first.'"

EDMUND E. DAY
President, Cornell University.

"The war to make men free is a timeless war, a world war of which the present conflict is only a part."

HENRY A. WALLACE
Vice President.

"It will take much more ingenuity to defeat Lieutenant General Unemployment than it will to overthrow Hitler."

C. A. BOTTOLFSEN
Governor of Idaho.

"If we lose our liberty and freedom in the United States, it will be because of our indifference, of mental laziness, of even physical laziness."

EDWARD V. RICKENBACKER
President and general manager, Eastern Air Lines.

"The public has a right to expect big things of the air transport industry, based on billions of expenditures which are nothing more than taxes to all of us."

EDITORIAL STATEMENT
The Wall Street Journal.

". . . transportation is today an industry that is in need of *integration.* Integration has been the modern watchword in all other great industries . . ."

KARL E. MUNDT
U. S. Representative from South Dakota.

". . . private ownership and operation of radio in this country is not a guaranteed certainty for even the next four years—to say nothing of the permanent future."

ERIC JOHNSTON
President, U. S. Chamber of Commerce.

"After this war we shall still be living in a most imperfect world. Under these circumstances, our chief reliance must be in our own strength and good, common, ordinary horse sense. We can be good neighbors without moving into the house of our neighbors."

FREDERICK C. CRAWFORD
President, National Association of Manufacturers.

"When the free word is suppressed, there is bound to go with it the free competitive system. In the course of 150 years this system of free enterprise has raised the masses of mankind in the western world from poverty and degradation and set their feet on the road to their just place in the sun."

HARRY F. KELLY
Governor of Michigan.

"The struggle to preserve American democracy will not be won or lost in Washington. The issue is one that will be decided in the forty-eight states, in our cities, in our counties. Local self-government is the bedrock foundation of democracy. Improve the efficiency of government in the community in which you live and you are taking the first step in the preservation of our American system."

JAMES H. McGRAW, JR.
President, McGraw-Hill Publishing Company, Inc.

"When we were attacked at Pearl Harbor, we realized our physical peril immediately and united in a tremendous common effort against the enemy. The onset of economic perils is less obvious. No bombs will signal the deterioration of the private enterprise system, the extension of regimentation, the further control of business by government, and the concentration of political power in less and less responsible hands."

W. LEE O'DANIEL
U. S. Senator from Texas.

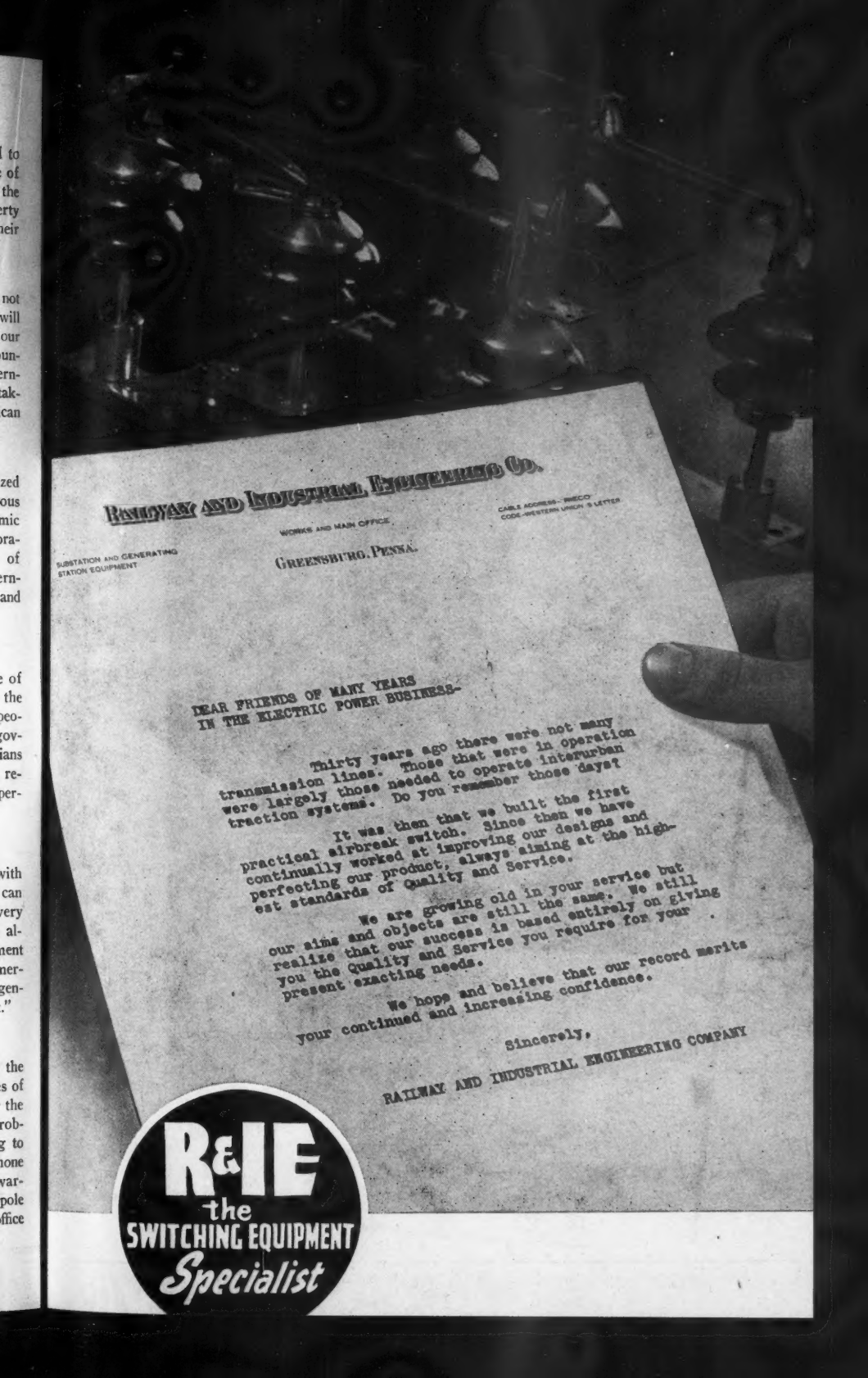
"I want to say emphatically that I think the people of this nation are very much displeased with the way the bureaucrats are handling our domestic affairs. The people of this nation have left the control of affairs of government so long in the hands of pussyfooting politicians whose constant thought is reëlection, reëlection, and reëlection until the 'banner of reëlection' has almost superseded the Star Spangled Banner."

W. LINN HEMINGWAY
Former President, American Bankers Association.

"A continuation of government deficits, coupled with bureaucratic control of the daily lives of our people, can only lead to state socialism and dictatorship, the very thing we are fighting to destroy in other lands. We already have instances of the encroachment of government on the private enterprise system under the guise of emergency in the establishment of government landing agencies. There is danger of these becoming permanent."

JOHN R. PORTER
Former president, United States Independent Telephone Association.

"Many industries . . . are greatly concerned with the possibility of the government dumping great quantities of surplus materials and equipment on the market [after the war]. . . . We [telephone companies] have no similar problem, as we know that our subscribers are not going to buy up old field telephones and start their own telephone systems. Likewise we are reasonably certain that no wartime developments will render obsolete our existing pole lines, our extensive cable systems, and our central office equipment."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We are growing old in your service but our aims and objects are still the same. We still realize that our success is based entirely on giving you the Quality and Service you require for your present exacting needs.
We hope and believe that our record merits your continued and increasing confidence.
Sincerely,
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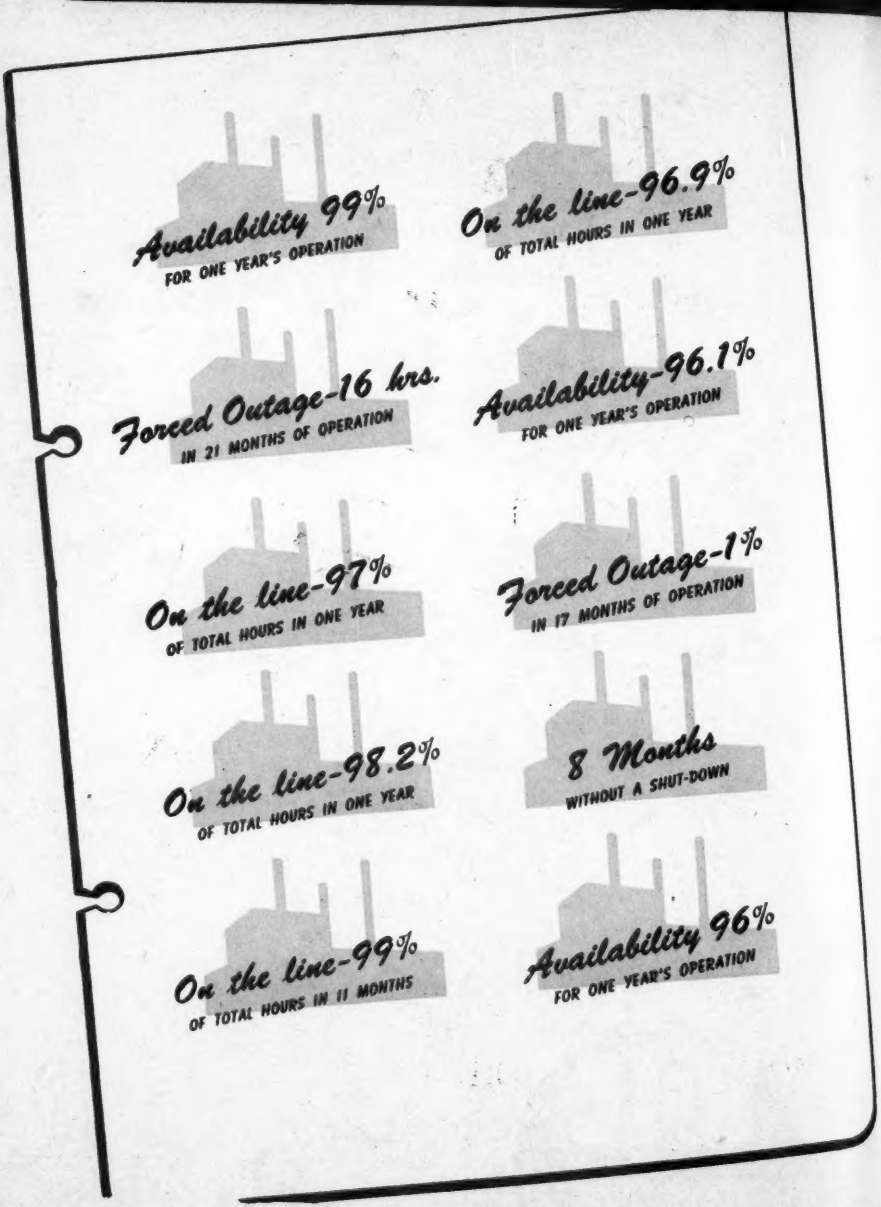
Utilities report on



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with these four simple rules
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1. Keep adding approved water at regular intervals. Most local water is safe. Ask us if yours is safe.
2. Keep the top of the battery and battery container clean and dry at all times. This will assure maximum protection of the inner parts.
3. Keep the battery fully charged—but avoid excessive over-charge. A storage battery will last longer when charged at its proper voltage.
4. Record water additions, voltage, and gravity readings. Don't trust your memory. Write down a complete record of your battery's life history. Compare readings.

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Philadelphia
Exide Batteries of Canada, Limited, Toronto

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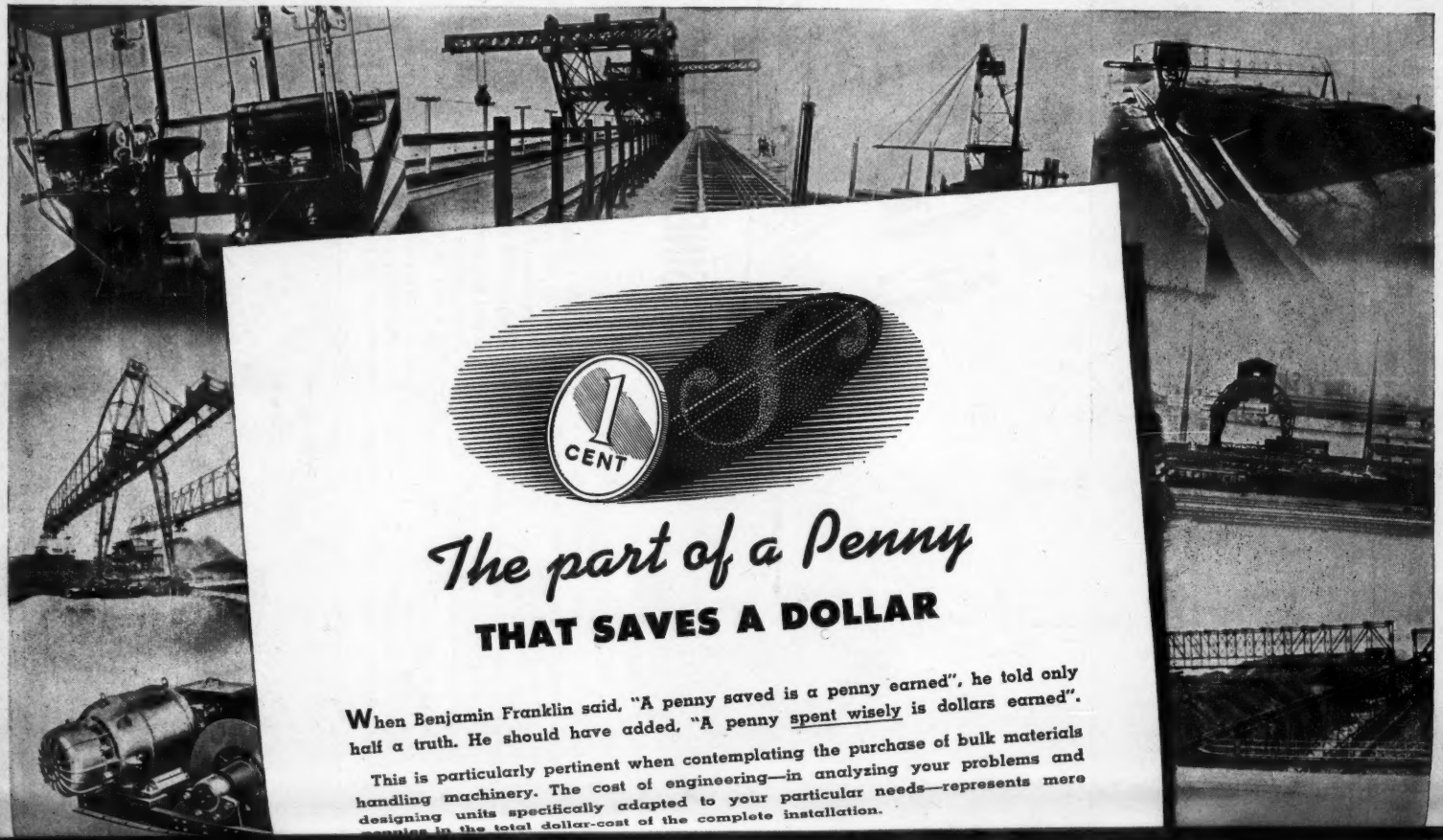


The part of a Penny

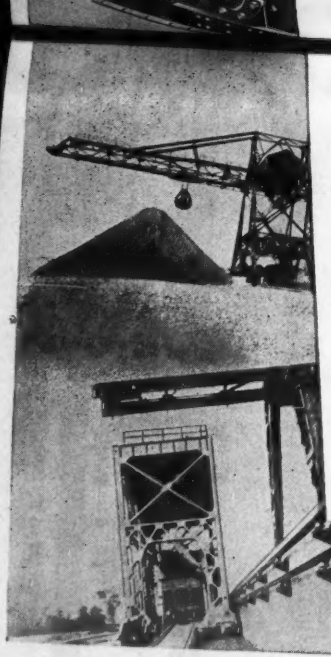
THAT SAVES A DOLLAR

When Benjamin Franklin said, "A penny saved is a penny earned", he told only half a truth. He should have added, "A penny spent wisely is dollars earned".

This is particularly pertinent when contemplating the purchase of bulk materials handling machinery. The cost of engineering—in analyzing your problems and designing units specifically adapted to your particular needs—represents mere pennies in the total dollar-cost of the complete installation.

skillful engineering before manufa
greatly reduced operating.

handling machinery. The cost of engineering—in analyzing your problems and designing units specifically adapted to your particular needs—represents mere [illegible] in the total dollar-cost of the complete installation.



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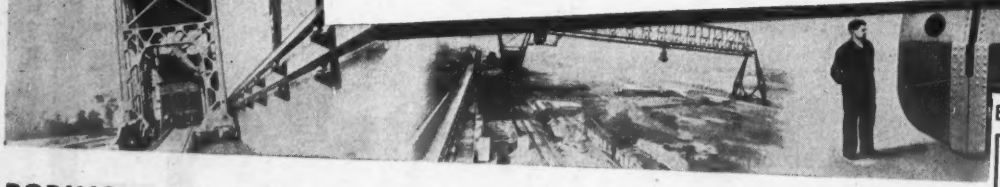

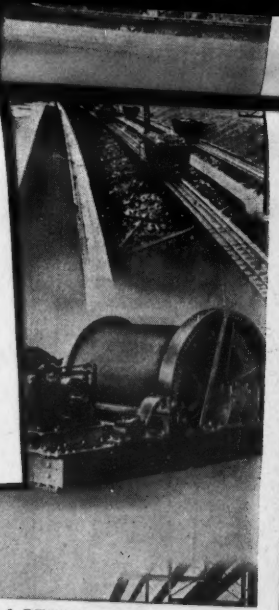

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standard of excellence thro
a process of conservative
velopment. The result is turb
whose engineering integ
builds confidence in every u

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either as units with their g
erators, or for mechanical d
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ARMY E NAVY
ARMY E NAVY

A star has been added to the Army-Navy "E" flags flown by both the Jeannette and the Ridgway plants of Elliott Company.

ELLIOTT Compan

H-673A

Utilities Almanack

Due to war-time travel restriction, conventions listed are subject to cancellation.

NOVEMBER

25	Th	¶ *American Standards Association will hold session, New York, N. Y., Dec. 10, 1943.*
26	F	¶ *Technical Valuation Society will hold annual forum and business meeting, New York, N. Y., Dec. 11, 1943.*
27	Sa	¶ *American Society of Civil Engineers will hold annual meeting, New York, N. Y., Jan. 19–21, 1944.*
28	S	¶ *American Institute of Electrical Engineers will hold technical meeting, New York, N. Y., Jan. 24–28, 1944.*
29	M	¶ *American Society of Mechanical Engineers starts meeting, New York, N. Y., 1943.* ¶ *Oklahoma Telephone Association starts meeting, Oklahoma City, Okla., 1943.*
30	Tu	¶ *Sales Executives' Conference will be held, Cincinnati, Ohio, Feb. 3, 4, 1944.*

DECEMBER

1	W	¶ *Illinois Independent Telephone Association will hold meeting, Chicago, Ill., Apr. 18, 19, 1944.*
2	Th	¶ *United States Independent Telephone Association will hold spring conference, Chicago, Ill., Apr. 20, 21, 1944.*
3	F	¶ *Public Utilities Advertising Association convenes for regional meetings in twelve cities throughout the country, 1943.*
4	Sa	¶ *Ohio Independent Telephone Association will convene, Columbus, Ohio, Apr. 25, 26, 1944.*
5	S	¶ *Indiana Independent Telephone Association will hold meeting, Indianapolis, Ind., May 3, 4, 1944.*
6	M	¶ *American Society of Agricultural Engineers starts fall meeting, Chicago, Ill., 1943.* ¶ *Exposition of Chemical Industries will open, New York, N. Y., 1943.*
7	Tu	¶ *New York Independent Telephone Association will hold meeting, Syracuse, N. Y., May 24, 25, 1944.*
8	W	¶ *National Association of Manufacturers starts second War Congress of American Industry, New York, N. Y., 1943.*

A mural by J. Monroe Hewlett, reproduced through courtesy of the Bank of New York

In this painting the fur trade and lumber industry are typified by the foreground figures; in the background appears the first Bank of New York building, which was erected on the present site (corner of Wall and William streets) in 1796. Gulian Verplanck, president of the bank at that time, is represented in the medallion portrait.

Public Utilities
FORTNIGHTLY

VOL. XXXII; NO. 11 NOVEMBER 25, 1943

Public Power Tax Muddle In the Northwest

Disparities with respect to taxation of publicly owned utilities leaning, in the opinion of the author, more and more to the view of the average citizen that there is no particular sanctity about a publicly sponsored power utility which should give it a tax advantage over a power utility developed with the investor's money.

BY ERNEST CLIFFORD POTTS

PUBLIC power districts of the Pacific Northwest have collected large amounts of taxes as a means of setting themselves up in business or in getting ready to do so. Now that a number of these are operating utilities —sometimes in competition with heavily taxed companies and often as successors to these—demand for reasonable and equitable tax contributions from the districts is developing. So a problem is posed which remains in much of a muddle.

The question is of broader scope than just indicated. In addition to the popularly termed PUDs, there are a large number of Rural Electrification Administration coöperatives and several municipally owned power utilities, three of them well publicized. And topping the entire group is the tax-free Bonneville-Grand Coulee Federal system. This mere naming of the agencies cites an inequity, and there are very many of them. These have the public and the lawmakers in a quandary.

Both Washington and Oregon have made starts toward taxation of three classes of the publicly created electrical utilities. These beginnings are much short of being equitable and satisfactory.

Washington, after much dillydallying, adopted a sort of basic 3 per cent public utility gross revenue tax, applicable alike to utility districts, coöperatives, and municipal systems. Two years ago there was added a 2 per cent state "privilege" tax for the PUDs, making these pay 5 per cent of gross revenues from sales of electricity, those at wholesale and those of water or steam excluded. Bonneville-Grand Coulee obviously is untouched by these taxes.

In Oregon, each of the three public power setups is now taxed, but each under a different law and in varying ultimate ratios. A new 1943 law purports to tax municipal systems 3 per cent of gross revenues. The law under which people's utility districts function provides that they be taxed the same as the investor-owned power utilities. REA associations, like the municipal systems, face taxes this year for the first time. These are taxed 2 per cent on gross revenues in lieu of a personal property tax on transmission and distribution lines, plus regular ad valorem taxes on lands and buildings. Bonneville Power Administration pays nothing.

In both states the fact that the Federal system with some half-billion dollars of tangible properties, more or less, contributes not a cent in support of local government irks the citizenry, particularly because the huge system in many instances competes directly with heavily taxed power companies. The 1943 Oregon legislature took cognizance of this and petitioned Congress to enact legislation obliging the Federal system to yield up lieu-tax payments. The memorial complained that the BPA facilities "do replace or compete with existing facilities which are taxable in the states of Oregon and Washington, and which are a substantial part of their tax structures," also of the inequity in the fact that Tennessee Valley Authority and Boulder dam make payments in lieu of taxes. Congress was asked to oblige BPA to make government-supporting payments "on a basis substantially equivalent to that which has been found proper in the operations of the TVA and Boulder dam."

The foregoing facts only so much as suggest some of the disparities existing in the two states with respect to taxation of publicly owned utilities. Obviously it would require many paragraphs to sketch all of the apparent inequities. There are inequities as between PUDs alone in the state of Washington, as will be noted from a tabulated presentation accompanying this discussion. There are further inequities as between PUDs and REAs, others as between PUDs and the municipal systems, and still others—not listed—as relate to the Federal-state-regulated private utilities. Then the number of them again may be multiplied by contrasting PUD taxes in Washington with those in Oregon. The disparities involving the coöperatives and the municipal utilities can be multiplied in virtually that same manner.

Finally, the analyst really wishing to probe the innumerable discriminations

would need bring taxless Bonneville project and the severely taxed investor-owned electrical utilities, plus the competitive impingements, into the picture. The whole is a mess.

Now, the average citizen of these two states does not see any substantial difference in the matter of tax paying, between the four classes of publicly created electrical vendors. The truth is that the average citizen is more and more taking the view, in the light of the competitions that grow up and with the burdens of subsidization becoming evident, that there is no particular sanctity about the publicly sponsored power utility giving it a tax advantage over the power utility developed with investors' money.

As proof of the existence of the sentiment just noted, the 1943 Oregon legislature at one time was near to enactment of a law taxing municipal power systems precisely as the privately managed companies are taxed. A bill proposing thus to tax "municipals" came into the legislature under very imposing sponsorship. Two background factors help explain the strong sponsorship and the strong sentiment for the measure.

In the first place, the people's utility district law providing for full taxation of PUDs could not be expected to stand if municipal systems remained tax-free. An opinion by the state attorney general held that, if attacked in the courts, such tax provision would be invalidated as discriminatory between the two types of power utilities. Even aside from the inequities involved, sentiment favored removal of the discrimination through taxing of the city-owned systems.

This was to help validate the district tax law.

The second factor centered in a keen controversy at Eugene where Oregon's most successful municipal power utility has been developed. A row had broken out because this utility flourished well but paid no taxes. The system's manager resolutely opposed payment of taxes or any substantial lieu contributions; the city council was more or less divided, while leading business men and a potent daily newspaper of judicial approach to controversies favored taxation. The bill for full taxa-

TABLE I

TAX INEQUITIES—OREGON

	General "Lieu" Taxes	*Property Taxes*	*Contributions to Municipality*
People's Utility Districts ...		Regular Levies	
REA Coöperatives	2% of Gross Revenues in Lieu of Tax on Lines	Regular Levies on Buildings, Lands	
Municipal Systems	3% of Gross Revenues As Local Tax[1]		Voluntary
Bonneville Power Administration		NO TAXES	

[1] No tax collectible if system owes past-due debt principal or interest, or lacks "adequate" depreciation and replacement reserves.

tion of municipal plants of the state was introduced by the four legislators from Lane county—Eugene the county seat of Lane.

MUNICIPAL system chiefs and public ownership leaders from all over the state got busy. They were able to pressure the Lane legislators and particularly were successful in branding the bill as merely an outgrowth of the "Eugene row," blinding the assemblymen to the basic question of the adequate, just taxing of all municipal power businesses. The outcome was the enactment of the compromise act imposing the 3 per cent gross revenues tax.

The taxationists thought they had won a fairly good victory, but the act carries an important exception. The tax needs be paid only if the municipal utility has all principal and interest on indebtedness currently paid and "has created and accumulated an adequate depreciation and replacement reserve in the judgment of the body having control of such electric power plants."

IT remains to be seen whether any of Oregon's eleven municipal utilities will take advantage of this loophole. If they do, this may serve further to arouse sentiment for more uniform and equitable taxation entirely around the circle of power vendors. It may be noted, in passing, that even the huge municipal City Light of Seattle—Washington metropolis—could dodge a tax so framed, since for years it has used up annual depreciation allocations as a means of meeting bond maturities —a practice which no state and federally regulated utility would be permitted to follow.

OREGON'S laws for taxing three closely related power-vending agencies by three different methods and with varying incidence will draw fire in operation. (For a comparison of public power tax contribution in Oregon see Table I.) They are satisfactory to almost no group or faction. When the power district promoters were fighting their case before the public they boasted that no special favors were expected—the districts "would stand squarely on their own feet." These boasts were thrown back at them when the 1941 legislature passed the present PUD tax act, making its passage the easier. Oregonians, generally enjoying very low power rates from the private companies, have been slow to embrace the PUD program. The state has only two operating districts, both only a few months in business. They have indicated no intention to attack the law under which they pay the same state and local taxes as were paid by the company from which they bought the properties. They enjoy a substantial advantage in not having to pay the Federal tax as did the power company.

It has been noted that in Washington the municipal systems—there are particularly big ones in Seattle and Tacoma—pay 3 per cent of revenues to the state while the PUDs pay 5 per cent. Under permissive law, the PUDs may also be assessed a local license fee of any amount determined upon by cities in which they are domiciled or in which they operate. This license in one instance last year was $20, in another was $10,152, while some districts escape this impost entirely. For a comparison of public power tax contribution in Washington see Table II.

TABLE II

TAX INEQUITIES—WASHINGTON

	State Public Utility Tax	*State Privilege Tax*	*Real & Personal Taxes, Assessments*	*City Licenses, Contributions*
Public Utility Districts.	3% of Gross Revenues	2% of Gross Revenues	Subject to Any Local Improvement District Assessments	Municipality May Impose Tax As License
REA Coöperatives	3% of Gross Revenues	2% of Gross Revenues for Some (See Note)	Regular Levies, Assessments, Except As Explained in Note	
Municipal Systems	3% of Gross Revenues			Contributions Voluntary
Bonneville Power Administration	NO TAXES			

NOTE—Some few REA businesses are owned by a PUD. For these the taxes and charges are those of the PUD.

DISPARITIES in tax payments and lieu contributions as between the three leading municipal power systems of the Pacific Northwest, though now slightly minimized, have been and remain—surprisingly—great. Already mentioned, the three are: Seattle City Light, Tacoma City Light, and the Eugene utility.

The Eugene plant has been paying nothing directly in support of government, and contributions benefiting the municipality have been nominal. Arguing to thwart the full taxation of his and other municipal power systems, the manager stated that this would mean a substantial increase in electric rates for his utility. As Eugene's rates are among the lowest maintained by municipal plants of the nation, the manager's jealous guarding of them by opposing taxes of any sort is readily understandable. The system will pay the compromise 3 per cent tax without increase in rates.

Tacoma's City Light, also boasting of an especially low rate schedule, long has advertised that it pays 10 per cent or more of revenues in forms of taxation. For the year 1942 it made a showing of having paid 10.1 per cent of operating revenues as so-called direct taxes and a total of 13.89 per cent in all forms of taxes, licenses, and gratuitous service. The listed amount of $558,994 checks at the 13.89 percent-

age with the $4,023,992 of operating revenues. Chief taxes are the 3 per cent state levy and 7½ per cent paid the city as a gross earnings tax. While Tacoma has been accused in the past of fudging a bit to make a favorable tax showing, its figures now seem acceptable. It still has a substantial tax advantage over competing or rival private utilities, particularly in the Pacific Northwest, where the state-Federal-regulated power companies pay tax exactions at average rate of 17 per cent of revenues.

SEATTLE CITY LIGHT always devotes a page in its annual report to "Taxes and Contributions to the Cost of Government." Every possible point is strained by way of inflating the total. The analyst must reject such items as pay of accountants who keep the City Light records in the city treasurer's office, part pay of employees of the city's purchasing department, an item purporting to be the excess cost of street lighting over amount received, et cetera. Items of taxation and license in 1942 totaled $433,875. This was 5.13 per cent of $8,451,324 electrical operating revenues. In 1941 the system had similarly paid 5.41 per cent. Perhaps there might fairly be added to tax items of 1942 the sum of $145,297 allocated "in lieu of social security taxes." On this basis the city utility in 1942 paid taxes, lieu taxes, and licenses equaling 6.90 per cent of operating revenues, this comparing with 7.35 per cent paid in 1941.

Exemplification of the inequity of Bonneville's complete exemption from taxation drew attention a few months ago. A school district at Bonneville, Oregon, surrounded by project-owned property, found itself virtually without funds with which to carry on. Appeals to county and state authorities were relayed to Washington. It seems that eventually funds for the school were obtained from some Federal agency, enabling the district to operate. Informed citizens see in this outcome just a new and added subsidization of the Federal project at taxpayer expense. A lot of them argue that Bonneville project also must make a beginning toward "standing on its own feet." Fortunately, the project has not yet taken many millions of dollars of real property off the tax rolls, but it does have in utilization materials of immense value, which, in private ownership, would be subject to taxation.

AT start of this discussion mention was made of the fact that the PUDs, particularly in Washington, had collected a large amount of taxes by way of financing their organization. This is pertinent in the existing situation. Taxpayers have come to realize that they heavily subsidized the twenty-six Washington PUDs active at end of 1942. They have become particularly irked where certain PUDs continued to impose tax levies after setting up in the electrical business. They want operating PUDs to pay equitable taxes, and not win an offset by collecting from the taxpayers at the same time.

The cost to the taxpayers of financing a total of thirty-one PUDs in Washington in the seven years ended with 1942 averaged $48,319 per PUD. (See list under Table No. III.) The sum was $1,497,887. Year of greatest direct subsidization was 1938, when the districts levied $476,869 from tax-

payer pockets. Ominous and not readily understandable is the fact that the second highest year's taxes was the $363,602 collected in 1942. Eleven PUDs which collected taxes in 1938 collected them also in 1942. Mason county PUD No. 3 and Franklin county PUD made levies annually in the seven consecutive years ended with 1942. This Mason district and the important Grays Harbor county PUD are among those which benefited from tax levies after revenues were being derived from operations.

A list of ten Washington PUDs organized seven to eleven year ago, with the amounts of taxes they levied for themselves in 1942, six to ten years after organization, appears in tax Table IV.

PUBLIC revolts over lavish and unnecessary expenditure of tax-raised money by the power districts have occurred in several communities. A good example was that in Yakima county, where the PUD is not yet operative. It levied $38,539 against the taxpayers for the year 1942 and about a month before last November's election set a budget of $36,000 for 1943. The electors revolted and defeated the two directors running for new terms. A well-paid manager—

TABLE III

TAX LEVIES MADE BY WASHINGTON PUDS ORGANIZED 1932-38
Only Tax Totals of Years 1936-42 Available from State Auditor's Report Included

PUD	*Year Organized*	*Assessed to Taxpayers*
Grant County No. 1	1932	$ 1,597
Mason County No. 1	1932	11,963
Benton County	1934	15,876
Franklin County	1934	11,709
Mason County No. 3	1934	52,695
Chelan County	1936	47,324
Cowlitz County	1936	119,311
Douglas County	1936	56,161
Ferry County	1936	5,385
Kittitas County	1936	32,665
Lewis County	1936	135,045
Lincoln County	1936	42,773
Okanogan County	1936	58,732
Pacific County No. 2	1936	40,563
Pend Oreille County	1936	10,213
Skagit County	1936	78,925
Snohomish County	1936	163,371
Stevens County	1936	15,687
Wahkiakum County	1936	11,094
Whatcom County	1936	170,001
Clark County	1938	125,817
Grant County No. 2	1938	36,663
Grays Harbor County	1938	44,186
Klickitat County	1938	26,050
San Juan County	1938	3,159
Skamania County	1938	13,572
Thurston County	1938	72,016
Total		$1,402,553

TABLE IV

TAX LEVIES BY WASHINGTON PUDS IN 1942

Year Organized	*PUD*	*1942 Levy*
1932	Mason County No. 1	$1,888
1934	Mason County No. 3	10,673
1934	Franklin County	512
1936	Douglas County	9,833
1936	Lewis County	15,021
1936	Okanogan County	19,693
1936	Pend Oreille County	865
1936	Skagit County	19,812
1936	Snohomish County	61,813
1936	Whatcom County	27,303

with nothing to manage—"departed," clerical help was dismissed, costly offices were given up, less expensive legal counsel was arranged, and the new commission set about spending as little as possible of the budgeted taxpayer money, assessed before the revolt gained momentum.

The first goal of a public dissatisfied with this taxation muddle is to bring Bonneville Power Administration into line; that is, into tax-contribution status. The second goal, no less important, will be to win an approach to equity and uniformity with respect to all power vendors.

If the showing Tacoma City Light has achieved as to rates is an unpalatable "pill" for the opponents of public ownership, the utility's eventual ability and willingness to contribute 13 per cent to 14 per cent of revenues as "taxes" is a criterion equally as distasteful to public ownership promoters.

Sure enough, here is a taxation "yardstick"! Nor is it a specially concocted, synthetic one, such as has discredited the word in electrical circles. Those in the Pacific Northwest who believe publicly developed power utilities should fully pay their way, with equity for every affected interest, may be expected to push forward with some such criterion in mind.

Blessings on Thee, Little Lady

ONE day a week Miss Marguerite See wears two shoes, the other six just one. Soldier passengers on the Junction City-Fort Riley, Kansas, bus line, on which she is driver, are startled by her bare left foot and they always ask "How come?"

Miss See explains: "It's a habit I've had ever since I was a little girl pumping my tricycle up and down streets at Excelsior Springs, Missouri. Now it's more than a habit, because I can do a smoother job of handling the clutch of this big bus when I have no shoe in my way."

Does Labor Favor Government As an Employer?

A pertinent question suggested by the passage of recent labor legislation by Congress over the veto of the President.

By ALFRED M. COOPER

THE passage by Congress of the Smith-Connally bill over the veto of the President has given the more revolutionary-minded among our labor leaders occasion for much thoughtful reflection. It would appear that the implications of this act of Congress have been sufficient to cause these labor officials to review once more the advantages and disadvantages of bargaining with governmental agencies and with private industry in matters pertaining to the wages and working conditions of the members of their unions.

Until recently these same leaders of labor were quite sure they had evolved a new and foolproof formula in labor relations. Stated crudely, this policy took the form of consistently scratching the back of a friendly Federal administration and awaiting in turn a reciprocal scratch from Washington. Until Congress, stung by a popular demand for action from constituents resulting from the nation-wide coal strike, cracked down on the pampered labor leader with the Smith-Connally Act, there was apparent no weak spot in this plan of coöperation between labor and the present political leaders.

To those who feel that the labor leaders have made too much of a fuss over a bill that offers penalties only to those who foment trouble among *governmental* employees, it may be news that the leaders of labor often have had much more difficulty bargaining successfully with governmental agencies than they have ever had in arriving at contractual agreements with private employees.

IN a previous article in PUBLIC UTILITIES FORTNIGHTLY, I called attention to the peculiar situation existing between the civil service commission of a governmental organization and the leaders of organized labor who found it necessary to deal with the members of such a commission. Briefly the facts in this situation are these: Civil service commissions are empowered to determine hourly and monthly rates of pay for civil service employees and have, according to the charter under which they function, the final word in all matters pertaining to the working conditions under which governmental employees labor. It so happens that these are exactly the prerogatives that the leaders of organized labor have claimed as their own privileges, and this situation has resulted in many hot battles between civil service commissions and labor leaders in various Federal, state, county, and city governmental organizations.

These fights for control of the labor relations of civil service employees are often more fiercely contested than the better known jurisdictional battles among the labor unions themselves. As a rule, however, such disagreements are fought out in private, with only occasionally such a contest for control boiling over into the public prints. One instance of this sort of fight that received some publicity was that waged between the Civil Service Reform Association of the city of New York and the Transport Workers' Union of the CIO. This fight occurred on the occasion of the union's attempt to organize the 32,000 employees of the IRT and BMT who had been blanketed into civil service when their companies had been taken over by New York city.

IN the course of that controversy the executive committee of the La Guardia civil service association issued this statement to the press: "Misguided and selfish leaders of employee organizations, aided and abetted by politicians who presume to use the cloak of trade unionism to foster their political ambition, would have the public believe that there is no distinction between public and private employment. There is, of course, a very real difference."

This instance of name calling gives a fair idea of the opinion held by the average civil service commission of the average labor organizer. An indication of the peculiar framework within which the governmental organization must function is found in the fact that no matter how much such a public squabble may affect adversely the morale of a group of civil service employees, the management of that department or bureau has no opportunity to participate in such an altercation. The fight is strictly a private one between the union and the civil service commission.

As to the question raised above by the Civil Service Reform Association regarding the rights of governmental workers to organize and go out on strike, that question has been settled, for the duration, by the Smith-Connally Act. In peace time, of course, governmental employees (and particularly the employees of publicly owned electric utilities) have repeatedly gone out on strike whenever they have seen fit, and no doubt will continue to do so once this war has been won.

IN time of labor shortage the labor leader has little difficulty in main-

American Way of Doing Business

"If our labor leaders . . . feel that the average American voter cannot quite see his way clear to perpetuating a bureaucratic form of government in this country, there is every reason to believe that these gentlemen will overnight forget their revolutionary preachments and reaffirm their everlasting faith in the old-fashioned American way of doing business through private initiative."

taining the upper hand in his dispute with the various governmental civil service commissions. In the postwar period, however, there is reason to believe that the normal peace-time status in the relations of labor leader and commission will once more assert itself, and the commission again take control of governmental labor relations. This fact, coupled with the passage of the Smith-Connally Act (which the labor leader considers a stab in the back by a "labor" administration he has so loyally supported for more than a decade), has caused the labor dictator to stop and ponder. If, as a result of these reflections, he decides that private enterprise is a more reliable agent with which to work out labor agreements than is the governmental agency, such an outcome to his deliberations would not be at all surprising.

Self-interest is powerful motivation, and it requires only a most cursory examination of the phraseology of the Smith-Connally Act to demonstrate that none of its penalties apply to the labor leader whose people are employed in private industry. It is only after the members of a labor union are employed in a company *which has been taken over by government* that dire penalties may be inflicted on the labor leader who foments a work stoppage.

John L. Lewis, during the miners' general strike, cried loudly for government to take over the mines, stating that his men would prefer to work for government rather than for the mine operators. *But this outcry was raised before the passage of the Smith-Connally Act over presidential veto. Since that time no labor leader has made any demand to the effect that the industries in which his people are employed be taken over and operated by government.*

There can be no question but that the more radically minded among our labor leaders have in the past been powerful allies of that minority in our Federal administration who are striving to replace our constitutional form of government with some form of bureaucratic administration. The support of such measures as subsidized price roll-backs and grade labeling by powerful union officials indicates the length to which these leaders of organized labor have been willing to go in order to win the approval of the most revolutionary element in Washington.

It is reasonable to believe that these same labor leaders will now go much slower in advocating the adoption of revolutionary changes, either in our form of government or in our traditional method of doing business under a system of private enterprise. Indeed, it would not be at all surprising if the labor leaders shortly rediscovered the blessings of private initiative and representative government and became the most vociferous advocates of that axiom of American business that tells us we must "keep it private and keep it free."

As recently as 1940, John L. Lewis demonstrated conclusively that no labor leader will follow any political leader beyond a point dictated by self-interest. If our labor leaders (and I refer particularly to those chiefs of organized labor who have been most actively affiliated with the political fortunes of the present administration) feel that the average American voter cannot quite see his way clear to perpetuating a bureaucratic form of government in this country, there is every reason to believe that these gentlemen will overnight forget their revolutionary preachments and reaffirm their everlasting faith in the old-fashioned American way of doing business through private initiative.

The political convictions of labor leaders at any moment are, of course, only important as these leaders can control the votes of the members of their unions in any election. We hear much of the "labor vote" in present-day political discussions, and undoubtedly organized labor, in the past, has generally followed the dictates of its leadership at the polls. At present, however, there are many millions of Americans who, since our entry into the war, have become members of labor unions only because they were forced to join such a union in order to secure a job in our war industries. It remains to be seen whether these people will follow a leadership not of their choosing, regardless of the direction in which those leaders may jump in the months that lie immediately ahead. Personally, I believe there is now only one group of voters solidly behind a socialistic course for the Federal government — the governmental employees.

There are those who contend that the American workman does not care a hoot whether he is employed by government or in private industry, so long as he is well paid for his efforts. I doubt if these cynical gentlemen have recently worked alongside these same workmen.

My own experience convinces me that the average worker in this country much prefers to work for a private corporation, and has very definite ideas on this subject. If I am right in this

assumption, the labor leader will have little difficulty in persuading the worker that his future is most secure when he is employed under private enterprise.

Even the most revolutionary-minded of the labor leaders are most realistic in their thinking. They have repeatedly observed the misfortunes that have befallen labor in every country in which a totalitarian form of government has been set up. They know that their success has been attained by preaching a radicalism in which they do not believe, in a country whose constitutional form of government guarantees their right to speak their minds. These leaders know full well that once an ironclad bureaucracy clamped down on our civil rights, organized labor would no longer be permitted to strike. It is in the penalties that the Smith-Connally Act imposes on the *leadership* of organized labor that these officials have received a foretaste of what would be in store for anyone who foments labor trouble under a bureaucratic form of government—either in time of war or in time of peace.

IN short, the more responsible type of labor leader is beginning to see that the inevitable end of an alliance between a socialistic trended government and independent trade unions is the gradual loss of the latter's independence.

The principal justification for the existence of labor unions (and therefore justification for the jobs of union leaders) lies in their ability to bargain on behalf of their members for various concessions in the form of better wages, less hours, working conditions, and so forth. But when the government, itself, assumes these responsibilities on behalf of labor by the promulgation of statutory wage and hour legislation, and when the government undercuts the very basis of bargaining —the right to strike, union leaders begin to have an uncomfortable feeling that they have outsmarted themselves, and that they have maneuvered themselves out of a job. They find that the government has taken over and is in a position to deliver about all the benefits which labor can receive and that anything over and above is likely to be illegal. Hence, they know that the average member will pretty soon wake up to the fact that dues paying, under such circumstances, is more or less a waste of money.

THAT, of course, is an old story. It has happened in all the dictatorship countries. Nazified German labor, even before the outbreak of World War II, found itself subject to the

"IN *time of labor shortage the labor leader has little difficulty in maintaining the upper hand in his dispute with the various governmental civil service commissions. In the post-war period, however, there is reason to believe that the normal peace-time status in the relations of labor leader and commission will once more assert itself, and the commission again take control of governmental labor relations.*"

iron-bound control of that synthetic labor leader, Robert Fey, who in turn, was a creature of Hitler. In Russia, that great land of the proletariat, there is no such thing as an independent labor union. Collective bargaining is done entirely through government channels and the very discussion of a strike—even before the invasion of Russia by the Nazis—was about the quickest way to wind up rolling snowballs around Siberia.

All told, independent unionism would be pretty stupid indeed if it did not, in the face of so many prime examples of liquidation through government domination, realize that collective bargaining can only be exercised when unions deal with private management. Bargaining between unions and the government, regardless of honeyed words from left-wing politicians, invariably takes on the atmosphere of bargaining between the wolf and the lamb.

The more revolutionary-minded of our labor leaders have prospered because they have guessed right politically during the past decade. It will be interesting to see whether or not these gentlemen will consider the Smith-Connally Act as the handwriting on the wall.

If they do we may expect to see, within the next few months, a surprising change of political heart among those who direct the destinies of organized labor in America.

Mount Royal Station Has Lost Its Rockers

"For years the rocking chairs at Mount Royal station in Baltimore, Maryland, had survived—ever since the station was finished in 1895—and, Baltimore being what it is, there is sure to be a widespread belief that it is nonsensical to remove them now. What if they did give an old-fashioned look to the place? They were sturdy and comfortable; and since when has Baltimore begun to object to solid comfort merely because it may have an old-fashioned look?

"In point of fact, the chairs were not removed for that reason, but because they took up too much room. The Baltimore & Ohio Railroad is strikingly like the city in its refusal to abandon the old ways for no better reason than that they are old; but, again, like the city, it can and does move when there is a real reason for moving.

"Mount Royal station has been modernized, not by way of keeping up with New York, but because modernization was necessary if traffic was to be handled adequately. The old station is sleek and shiny beyond all precedent, but it is also less interesting and certainly no more comfortable. Perhaps it isn't backwardness that inclines the city and the railroad to cling to old-fashioned things and old-fashioned ways as long as possible; perhaps it is a shrewd appreciation of the fact that all too often the new is patently worse."

—Editorial Statement,
The (Baltimore, Md.) Sun.

The TVA—Its Evolution And Representations

PART II

Here, the author discusses TVA finances in relation to the so-called yardstick and questions the soundness of the claim that TVA has been of outstanding benefit to the state of Tennessee.

BY J. A. WHITLOW
VICE PRESIDENT, PUBLIC SERVICE COMPANY OF OKLAHOMA

TVA Finances and the Yardstick

TVA boosters are good psychologists. They know how to influence public opinion and take shrewd advantage of every opportunity. Through evasive opinions of the Supreme Court they have avoided a test of the constitutionality of TVA, so recently they have been saying that all opposition is now quieted and TVA is receiving general acceptance. This is in spite of the fact that criticisms in the press, particularly trade or technical publications, are as frequent as ever. Most often these articles are in answer to some of the exorbitant claims of TVA advocates.

The National Planning Association recently published one of a series of reports that was prepared by Alvin H. Hansen, professor of economics at Harvard University. In this pamphlet, Dr. Hansen referred to TVA as a "magnificent achievement" and then its friends here and there repeated the claim that TVA is a magnificent achievement. It is necessary therefore to discuss briefly the financial outlay and the results obtained to form an intelligent idea of this claim.

THE foundation of TVA's financing is direct appropriations by Congress from the U. S. Treasury. TVA has been building dams and more dams since the authority was created in 1933, and each year it has obtained many millions from Congress. The annual reports of TVA are very confusing as to

the total amount appropriated. As late as February, 1943, TVA's friends were saying that the total investment by the Treasury was $416,063,000. However, a book, "The Tennessee Valley Authority," was written by Professor Ransmeier of Vanderbilt University. On page 464, he gives the appropriations by years, the cumulative total as of September 1, 1942, being $667,969,270.

In addition to this TVA has issued bonds in the sum of $60,572,500 as permitted by the act, mainly for the acquisition of the properties of power companies. It has also benefited indirectly from other or incidental appropriations, so Senator McKellar of Tennessee has stated that TVA has cost $800,000,000 to date. It would be correct if we added about $100,000,000 to this as representing the interest which the general taxpayer has paid in the ten years on the money appropriated to TVA by Congress, which interest has been paid by the nation's taxpayers. This would make the total investment at this time nearer $900,000,000. It is apparent that the complete plans contemplate an expenditure well over a billion dollars.

TVA was advanced as a "yardstick" with which to measure the fairness of the rates of electric companies. If this yardstick is not a false one it must take into consideration the costs which an electric company is compelled to meet. These costs necessarily include taxes, interest on the money invested, and an allowance for depreciation. We have already discussed taxes and found that TVA's taxes are so small compared with company taxes, they can almost be said to be merely a "token" tax. In addition to these items other Federal projects are usually required to pay back all or part of the money advanced by the government in some period, which in some cases varies from twenty-five to fifty years. While Congress made no requirement that the money it appropriates shall be repaid at any time it is fair to say the earnings ought to be sufficient to pay back the principal in a reasonable time. For this J. E. Bullard in a recent article estimates a rate of amortization of 2 per cent. It would be unfair to use this in a comparison with electric companies that do not retire their investments, but TVA in its recent tenth anniversary publicity seems to claim it is returning money to the Treasury and will therefore pay back the nation's investment in that project. It therefore is necessary to consider amortization to determine whether TVA's earnings are actually sufficient for such a purpose.

The interest which the government is paying on the money it borrowed to give to TVA is said to average 2¾ per cent, and a reasonable rate of depreciation to keep the property in operating condition is 2¼ per cent. On a total investment of $800,000,000 the total annual fixed charge will look like this:

2.75% interest	$22,000,000
2.25% depreciation	18,000,000
2.00% amortization	16,000,000
Total	$56,000,000

This is fixed costs only as it does not include operating expense or taxes. But the total gross revenue of TVA for 1942 was only $25,000,000, so if there were no operating expenses or taxes it would be short $31,000,000 of earning annual fixed charges for all it claims to be doing. This would seem

to be enough to demonstrate that TVA is not an economic project, but we will continue the analysis and give TVA every advantage.

THE total investment of TVA is $800,000,000, according to Senator McKellar. This would seem to include the $60,000,000 bonds the authority issued and perhaps other incidental money as the direct appropriations total about $668,000,000. The fairness of TVA's electric rates should be determined by the amount invested in property related to the production of electric power. This will include lands inundated, dams, power plants, transmission lines, and the like. But the land inundated by the lakes and the dams themselves also serve for navigation and flood control, so only a portion of their costs is chargeable to electric power.

The lower the cost of property allocated to electric power, the lower the taxes and interest and other fixed costs that should be charged against electric operation. So to justify a low electric rate, it is to TVA's interest to set up its bookkeeping so as to show a low proportion of the costs chargeable to electric power generation. Thus, although the Muscle Shoals steam plant cost the government about $60,000,000 to build, TVA only charged about $20,000,000 to electric investment.

Wilson dam at Muscle Shoals cost $46,951,000 but TVA charged only $19,529,000 to electric power. The Army Engineers had reported this should be $37,000,000.

The Army Engineers had estimated (House Document No. 38, Appropriations Committee 1936) that $75,000,000 would build dams on the Tennessee river sufficient for navigation. On this basis many believe that the rest of the hundreds of millions spent on these dams should be chargeable to electric power, but TVA didn't see it that way.

DR. ARTHUR MORGAN, the first chairman of the TVA board, objected to these methods of TVA and stated they were unfair and deceiving. He got in a big controversy with David Lilienthal, the director in charge of the electric power division of TVA. The President sided with Mr. Lilienthal and fired Dr. Morgan.

All these matters excited much interest and controversy at the time. They are not of so much importance now, because whatever TVA has fixed as the pro rata of total investment that is now allocated to power, TVA does

¶ "TVA *was advanced as a 'yardstick' with which to measure the fairness of the rates of electric companies. If this yardstick is not a false one it must take into consideration the costs which an electric company is compelled to meet. These costs necessarily include taxes, interest on the money invested, and an allowance for depreciation. . . . In addition to these items other Federal projects are usually required to pay back all or part of the money advanced by the government in some period, which in some cases varies from twenty-five to fifty years.*"

not pay nor earn the interest on that portion. Neither does it pay the taxes a company would pay, and so many other costs are avoided that the usefulness of TVA's rates as a "yardstick" has been thoroughly discredited. In order that this information be complete we will now discuss some of these features.

In its annual report for the year 1942, TVA states that its investment in "power plant" is $283,000,000 at the end of the year. So forgetting what we think this should be, let's see how its operations reflect earnings on this amount.

This same report states that the gross revenues from power operation for the fiscal year were $25,329,954, and that the net operating income after depreciation, payments in lieu of taxes, and "amortization of acquisition adjustment" but *before interest* was $4,280,252. Since the government pays about 2¾ per cent on the money it borrowed to give to TVA, then this interest should be 2¾ per cent of $283,000,000 which is about $7,800,000. An electric company cannot obtain money at that rate of interest, so for yardstick purposes we should at least double the figure. However, TVA only claims a net earning before interest of $4,280,252, so even at this low interest rate it failed to earn enough to equal what the government is out of pocket for interest on its own estimate of the cost of the electric power property by about $3,500,000.

THAT is not the whole story because electric companies pay now about 25 per cent of their gross operating revenues as taxes. TVA's gross was about $25,000,000, so a comparative tax bill would be $6,250,000, whereas it only paid about $1,800,000.

No figure is given in the 1942 abbreviated report as to the rate of depreciation, but from previous reports we may conclude it is also insufficient.

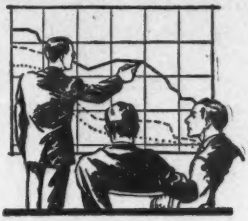
All this does not bear out the claims of TVA's friends that it is a "magnificent achievement" unless they are thinking in reverse. Here are some typical examples:

On May 16, 1943, a column entitled "TVA Idea Spreads 'Round the World" appeared in the press. This column was by a writer from Knoxville, Tennessee, the home of TVA. On exactly the same date a similar article appeared in the Louisville *Courier-Journal.* It quotes from James P. Pope, the director of TVA who succeeded Dr. Morgan. It is quite probable these articles had a common origin in TVA propaganda and that Mr. Pope was at least partially responsible for the claims made.

Each of these articles appearing in widely separated places in the Sunday papers on the same day stated:

1. That TVA has been "upheld" twice. We have explained that earlier in this paper.
2. That TVA is now generally accepted, and opposition has practically ceased. We also discussed that.
3. That in the first ten years of its existence TVA has returned to the government $44,000,000.

WE do not know why Mr. Pope uses the net income (before interest) for the whole ten years. That is an average of $4,400,000 per year, but $44,000,000 sounds much bigger than $4,400,000. If he had used the latter figure the reader would have almost automatically figured that $4,-



Fairness of TVA's Electric Rates

"THE fairness of TVA's electric rates should be determined by the amount invested in property related to the production of electric power. This will include lands inundated, dams, power plants, transmission lines, and the like. But the land inundated by the lakes and the dams themselves also serve for navigation and flood control, so only a portion of their costs is chargeable to electric power."

400,000 is one two-thirds of one per cent of $668,000,000, the total advanced by Congress without interest, or 1.6 per cent of $283,000,000, also before interest. In other words, neglecting taxes and other subsidies, Mr. Pope's own figures show TVA is not earning anywhere near interest on the investment. Another feature of Mr. Pope's story that is almost humorous is an acknowledgment that of the $44,000,000 which he says TVA has returned in ten years, $22,000,000 is in the provision for depreciation. A depreciation reserve is not considered as a portion of net income, because it is set up to replace units of equipment as they wear out or become obsolete.

Shall we assume TVA and its friends are trying to out-fox us by giving just half the truth, or the truth in such a way that the reader will draw a conclusion favorable to TVA?

Here are some of the half-truths you will hear from TVA's supporters:

1. TVA pays taxes; some go far enough to say "just like an electric company." That sounds convincing until you know the whole tax story.

2. TVA charges depreciation. Yes the same thing applies here. No one has been able to decipher from its reports just how it calculates the depreciation, except that the result is far from adequate.

3. That TVA pays interest. Yes it pays interest on the $60,000,000 it borrowed by issuing bonds, but it pays no interest on the $668,000,000 appropriated to it by Congress.

BUT why continue this story? The falsity of the yardstick claim appears from the following subsidies TVA enjoys that are not available to investor-owned companies:

1. TVA receives nearly all its money, interest free, from the government.

2. It has issued some bonds on which it pays a low rate of interest because the bonds are guaranteed by the U. S. Treasury both as to principal and interest.

3. Its taxes are only equal to ad valorem taxes of the property it acquired, at the time of acquisition. This is small compared to taxes paid by electric companies.

4. It can call on the engineers of the War Department or of other departments. At the President's direction it can obtain this or any other service from any government agency without cost to itself.

5. PWA helped finance cities to build electric facilities thereby adding to TVA's customers without much effort or expense on its part.

6. It receives 33⅓ per cent discount from the railroads on freight, and 25 per cent discount on passenger fares for employees.

7. All TVA mail is carried free by our postal system.

8. The Electric Home and Farm Authority (EHFA) was a separate government corporation handling the advertising, promotion, and sale of electric appliances, and extending credit to purchasers. This expense ordinarily borne by an electric company cost TVA nothing.

9. TVA has free access to patents on hydroelectric power or fertilizer developments, a clear discrimination against a competitor and confiscation of the rights of a patent owner.

10. TVA is not subject to state or Federal regulation, avoiding all the great expense of this and of making the expensive state and Federal reports.

Has TVA Helped Tennessee?

THE advocates of TVA are very active in trying to impress the public with its importance. One of them said recently that if TVA had done nothing else, we could charge off the whole $668,000,000 as a contribution to the war effort. They would have us believe that the war would be lost if these government projects had not been developed. The facts are that 90 per cent of the electric energy used for war industries is being supplied by the business-managed companies. The only place power has been rationed is in the TVA area where the droughts caused a shortage of water power that was made up by neighboring electric companies. If the companies had continued in business in Tennessee as in other states, they would have had a more balanced expansion program and would not have been caught short of steam power. TVA also boasts of the large amount of energy used by domestic customers. This is only a continuation of the usage that had been built to a high point in this area by the companies it displaced. Its greatest increase has been in those localities such as Tupelo that were previously served by unprogressive municipal plants.

The subsidies and advantages enumerated in previous sections are enjoyed by TVA at the expense of the nation's taxpayers. If anyone critizes the power program as being expensive, TVA's friends will say it does much besides generating power, such as developing fertilizer, and trying to improve the social life of the people. People traveling through Tennessee tell us they fail to see many evidences of these improvements which ought to be great since they cost over $800,000,000. Who couldn't do a lot with that money? The point is, should the government spend all this money to improve the social life in one state at the expense of all the rest? If a speaker or writer extols the great benefits that have come through TVA, just remember these benefits should be great at a cost of $800,000,000. If such a sum were *given* to Oklahoma for instance,

without interest or the necessity of paying it back, many will think it could be spent more to the state's advantage than building up a bureau over which the state has no control and which deprives our schools and governmental agencies of a part of their income.

THE same TVA booster, previously quoted, presented a list of claimed benefits in the Louisville *Courier-Journal,* in which he quoted at length from James P. Pope and David Lilienthal, TVA directors. He attempted to show that TVA had been responsible for great progress in the "TVA states." He cited certain statistics to prove that growth had been more rapid in the "four TVA states" of Tennessee, Alabama, Georgia, and Mississippi, and also in the "seven TVA states" which include the four above, plus Kentucky, Virginia, and North Carolina. The comparison was between the years 1933 and 1939.

It is well known that industrial development has been rapid in the southern states for many years. About thirty years ago the cotton mills began to move from the New England states to the coastal states in the Southeast. Also industrial development had been delayed there ever since the Civil War, and therefore any considerable growth was sure to show a higher *percentage* of increase than in the nation as a whole.

Really TVA only affects Tennessee to any large extent, as it penetrates but a few counties in the northern part of the states of Georgia, Alabama, and Mississippi, and these are not industrial counties. In the other three states it has practically not penetrated at all. We therefore analyzed the figures presented in the *Courier-Journal* to show the breakdown by states between Tennessee and the other states in the group that were not particularly influenced by TVA. To this we added Texas, which is a progressive southern state far removed from TVA. The results show that Tennessee has not progressed more than the others. The following subjects are the particular ones discussed in the *Courier-Journal.* The information is obtained from reports of the Bureau of Census and Department of Commerce, and from the *Blue Book of Southern Progress.* More exact reference will be supplied on request.

IN the number of manufacturing establishments Tennessee had an increase, from 1933 to 1939, of 46.9 per cent. The average for Alabama, Georgia, and Mississippi was 50 per cent, and for Texas 47.2 per cent.

In the number of wage earners, the increase for Tennessee was 38.9 per

¶ "IT *is well known that industrial development has been rapid in the southern states for many years. About thirty years ago the cotton mills began to move from the New England states to the coastal states in the Southeast. Also industrial development had been delayed there ever since the Civil War, and therefore any considerable growth was sure to show a higher* PERCENTAGE *of increase than in the nation as a whole.*"

cent, for the other three states 32.9 per cent, Texas 39 per cent.

In value added by manufacture, Tennessee increased 85.3 per cent. The other three averaged 90 per cent and Texas 91 per cent. In per capita income the increases were:

Tennessee	74.8 per cent
Average of other three	82.0 per cent
Texas	67.2 per cent

Other subjects are:

Bank Deposits	
Tennessee	94.7 per cent
The other three	82.5 per cent
Texas	96.2 per cent
Retail Sales	
Tennessee	83.7 per cent
The other three	80.6 per cent
Texas	86.7 per cent

In some of these Tennessee makes a fair showing but as a whole it has not progressed further than the states that have not been the beneficiaries of an $800,000,000 gift.

If this project carried on at such an enormous expenditure is really helping Tennessee in proportion to the outlay, there should be no dispute about its value. That value should be certain and visible. The dams are very fine structures. Enormous lakes have been created that have inundated the finest bottom farm lands. In doing this they have caused the abandonment of homes and villages. The dams are visible and so are the lakes, but lakes and hot dog stands along the shores are a poor substitute for homes, where families have lived for one hundred years.

The great industries in this area were nearly all there and highly developed before TVA appeared in the picture. Of course, under the stress of war needs, they are now greatly expanded. Few of them actually came to Tennessee because of the cost of power which is one of the smallest items for a manufacturer to consider. That the influence of TVA in attracting industry is negligible can be seen from the foregoing data and more especially from some information published in the *1939 Blue Book of Southern Progress.* In this issue the editors show the amount invested in new industries in each southern state for the year 1938, which was five years after TVA got under way. These investments for all new industry over $100,000 are:

Alabama	$21,628,597.00
Georgia	5,798,564.00
Kentucky	1,425,000.00
Mississippi	4,932,000.00
North Carolina	9,335,000.00
South Carolina	1,544,011.00
Virginia	26,939,000.00
West Virginia	7,150,000.00
TENNESSEE (TVA)	548,000.00

This is a sorry showing for Tennessee and thoroughly disproves the claim made by Director Lilienthal that TVA would "regenerate the industrial life of America."

EVEN in the matter of war contracts, the citizen might feel that TVA would be depended on heavily and would be far ahead of other districts. However, the *Manufacturers Record* for May, 1943, page 36, shows the following for all southern states:

WAR CONTRACTS AND ALLOCATIONS
June, 1940, through February, 1943

Alabama	$1,212,143,000.00
Arkansas	431,111,000.00
Florida	1,076,934,000.00
Georgia	1,187,676,000.00
Kentucky	552,765,000.00
Louisiana	995,830,000.00
Maryland	3,015,135,000.00
Mississippi	559,319,000.00
Missouri	1,812,863,000.00
North Carolina	937,495,000.00
Oklahoma	1,080,581,000.00
South Carolina	425,518,000.00
TENNESSEE	941,070,000.00
Texas	4,200,304,000.00
Virginia	2,070,300,000.00
West Virginia	569,131,000.00

So even on war contracts TVA fails to register. In this list of fourteen states Tennessee ranks tenth.

So what have the nation's taxpayers obtained for an expenditure or debt of nearly a billion dollars, and finally just how has Tennessee profited as the beneficiary of this huge sum? Are more TVAs on this order justified? The TVA propagandist is active and very astute in presenting arguments and figures. Almost invariably the figures, while perhaps correct as far as they go, will not stand close analysis, and lead to wrong conclusions. This occurs so regularly that we now think of it as "TVA, A Conspiracy of Half-truths."

Washington Double Talk

A DICTIONARY *of red tape language is being compiled by a Washington, D. C., newspaper columnist from definitions supplied by government employees and capital callers who have got lost in the maze of incomprehensibe words that have been flung at them, according to the* NEW YORK HERALD TRIBUNE.

For the guidance of others who may have to visit Washington some day, the TRIBUNE *presents below some of "the choicer definitions amassed by Jerry Kluttz of* THE WASHINGTON POST":

"Under consideration." Never heard of it.

"Under active consideration." Will have a shot at finding it in the files.

"Transmitted to you." You hold the bag—I'm tired of it.

"Concur generally." Haven't read the document and don't want to be bound by anything I say.

"In conference." Gone out—don't know where he is.

"Kindly expedite reply." For God's sake, try to find the papers.

"Passed to a higher authority." Pigeonholed in a more sumptuous office.

"Referred to you for appropriate action." Do you know what to do with it? We don't.

"We will explore the problem." We don't know what the situation is and if we did know we wouldn't know what to do about it.

"Further information and substantiating documents are requested." We've lost the stuff, so send it in again.

"Prepare this for my signature." You do the work and I'll take the credit, but if anything goes wrong you get the blame.

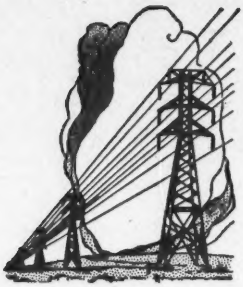
"Referred for remarks and recommendations." It's got me stumped. You sweat awhile.

"Government expert." A person who specializes in a narrow field so that every day he gets to know more and more about less and less until he finally knows everything about nothing.

"File this." Lose it, if possible.

"Management expert." A person who cuts so much red tape that he makes a mess of everything.

"Government lecture." A process by which contents of the lecturer's notebook find their way into employees' notebooks without passing through the minds of either.



Enforcement of Cut-off Rules

A brief reference to regulatory decisions which serve as a guide to executives in determining whether their companies have the right to discontinue service because of disputes with customers.

By LESLIE CHILDS

It goes without saying that a public utility company has the right to enforce reasonable cut-off rules for nonpayment of accounts. Too, this right extends to customer violations of regulations embodied in the service contract, always assuming the regulations are reasonable and necessary in scope.

So much for general rules, which, in the run-of-the-mill situations, will justify the invoking of cut-off regulations for their violation. And now let us turn to a few cases illustrative of their application under out-of-the-ordinary facts and circumstances. For example, take the matter of by-passing by customers, as a means of reducing current charges, a not infrequent and troublesome practice.

In one case a meter reader, in the employ of a public service company, discovered a movable by-pass connected with the electric meter in plaintiff's home. This appeared to account for a greatly reduced recording of current, from the usual, over a period of about thirty days.

The company thereupon called upon the customer to appear at its office for an adjustment and explanation. Two days later, upon the latter's failure to comply, the company invoked its cut-off rule. The customer thereupon sued the company for alleged resulting damages, and obtained a judgment for $150 in the lower court. In passing upon the issues, the higher court said:

"Using or allowing the use of the by-pass was clearly an active violation . . . of the contract [service contract], the observance of which obviously is of first importance to defendant [company]. Such a violation certainly confers on defendant the unquestionable right to discontinue the supply of energy until, at least, an adjustment . . .

has been reached by the parties. Deny such a right to a supplier of electric current and you at once put him at the mercy of those who desire to impose upon or defraud him."[1]

Judgment for customer was reversed, annulled, and his suit dismissed at his cost.

So, too, it was held in another case that a public utility company cannot be held liable in damages for the enforcement of its cut-off rules against a customer because of the failure of the latter to comply with the law in respect to having connections inspected and approved. For illustration, the following will serve:

Here, by city ordinance, users of gas were required to obtain an inspection certificate showing connections had properly been made. A customer of a gas company failed to comply with the ordinance, and the company discontinued its service. The customer then brought an action for damages against the company alleging an unlawful denial of service, and recovered a judgment for $300. But the higher court in reversing same had this to say:

"She [the customer] was actively violating the law of the city of Monroe and the rules and regulations of defendant. It [the company] had no right, had it so desired, to connive at or acquiesce in her illegal action. It could not be estopped or precluded from requiring her to comply with the city's ordinances with reference to obtention of certificate of inspection as a prerequisite to a continuance of its gas supply to her. It was in the exercise of a legal right, clearly vested in it, that the gas was discontinued."[2]

Another interesting question was raised in a recent case that involved the deducting of a service charge from the deposit the customer had made to guarantee its payment. In this case the customer had deposited $3. His light bill of $1.70 was not paid on time, and the company deducted same from his deposit. At this time, customer was notified that unless he restored the deposit his service would be discontinued, which was done on the customer's failure to comply.

Suit for damages followed, the customer contending that, since the company still had sufficient deposit to pay its bill, it had no right to cut off the service. In denying this claim, and in affirming a judgment for the company, the court said:

"Unquestionably, where the consumer fails to pay a just, undisputed bill for service rendered him by a utility, as provided by the contract between them, there is a breach of the contract by the customer; and in such event the company has the right to discontinue the service, and to charge the delinquent account to the amount deposited by the consumer. . . In a situation of this kind, before the consumer would be entitled to have the contract restored and service resumed, he must either pay the delinquent bill or restore the deposit."[3]

And now for the question of the right of a public utility company to dis-

[1] Jones *v.* Southwestern Gas & E. Co. (La Ct App 1936) 171 So 163, 164.

[2] Sullivan *v.* Natural Gas Co. (La Ct App 1934) 154 So 387, 391.

[3] Hicks *v.* Carolina Power & Light Co. (1935) 175 SC 350, 354.

Risk of Mistake in Invoking Cut-off Rules

". . . a public utility company may quite easily incur substantial liability, through a mistake as to its rights, in enforcing cut-off rules. And this, even though the claim upon which the cut-off is based is not disputed by the customer. It follows, where there is a bona fide dispute over the amount due, the risk of a mistake in invoking cut-off rules is greatly increased."

continue, or refuse, service to a customer until past due bills, arising out of prior transactions, have been paid. Situations of kind commonly arise where a customer vacates premises owing for services, then seeks to have the service resumed at another location.

There has been much litigation over the question, but the holdings thereon are not precisely in accord. However, in many cases they have turned on the wording of the service contracts, and whether they permitted a liability hook-up between separate and distinct contracts. Now let us see:

In one case the customer became indebted to a public utility company for services. The contract under which the services were furnished, in effect, provided that the company would not supply gas to a customer who was in default on payments until the bill had been paid.

A customer vacated premises owing a bill, and then sought to have services supplied him at a different location. The company refused this demand unless he paid the old account. In upholding the company in its stand, the court reasoned:

"There is nothing in it [service contract] limiting the right of the company to shut off the gas to the particular building in which default has been committed, but the provision, in effect, is that, in default of the regular payment of a bill by a customer of the company, it will not supply gas to him until payment is made."

The company "under its rules and the terms of the contract, had a right to refuse to supply the plaintiff with gas at No. 107 Fourth street, because he had made default in payment for gas previously furnished to him at other premises."[4]

In another case, a customer was supplied gas and electric service under

[4] Mackin *v.* Portland Gas Co. (1900) 38 Or 120, 127.

a contract that provided for its discontinuance for failure to pay bills, "either under this contract or any other contract." As in the case above, customer here defaulted in the payment of a bill at one location and thereafter sought to have service resumed at another. The company refused on the grounds of the outstanding bill, and the court in finding for the company had this to say:

"The agreement before us, . . . provides that the failure of the consumer to pay his bills, 'either under this contract or any other contract,' gives to the company the right to discontinue the service. . . And we see no real difference between the right of a utility company to discontinue service . . . , on account of the consumer's failure to pay a past-due bill . . . , and its right to refuse, for the same reason, to furnish at another place. . . . upon demand of such customer, the same kind or type of service . . . we think, and so hold, that the position of the [defendant] should be sustained."[5]

Now for the other side of the question, *i.e.*, cases in which utility companies have been denied the right to cut off for past-due bills, where the latter arose under separate contracts, unconnected in respect to liability for their payment, with the contract under which the cut-off was invoked.

In one case of this kind, a customer was supplied electricity by the company to his house and his garage. The service was furnished under two separate and distinct contracts. The customer failed to pay his garage bill, and the company cut off the service from both the garage and the house, although the customer had tendered the amount due for the house service. The customer sued for damages and recovered a judgment for $700. In affirming same the court said:

"Here, under the undisputed facts, the . . . company was supplying electricity to the [customer's] garage under contract separate and distinct from the one for his residence. . . . There is no provision in either of the contracts that unless both bills . . . were timely paid both of the places would be cut off. . .

"In such circumstances the appellant company could not be regarded as in a position to claim that the [customer] by not promptly paying the garage bill . . . had violated and become delinquent . . . as respects the residence, consequently the nonpayment of the garage bill would not legally justify cutting out the electricity for the residence. . . . The judgment . . . affirmed."[6]

Let's examine another case of this type. Here the customer was furnished electricity for lighting his store by the company under two contracts. The contract for the inside lighting was in writing and provided:

"That all bills are payable on the first day of each month. If not paid on or before the tenth, service will be discontinued."

The contract for the outside lighting of the customer's store was oral. The customer defaulted in payment of the outside lighting bill, but paid the inside lighting claim, and the company cut off both services. The customer sued and was awarded a judgment for $240

[5] De Pass *v.* Broad River Power Co. (1934) 173 SC 387, 402.

[6] Southwestern Gas & E. Co. *v.* Stanley (Tex Civ App 1931) 45 SW (2d) 671, 674.

damages. In affirming the judgment on appeal, the higher court used the following language:

"Under the contract [the company] had no right to discontinue the inside lights, because as to them [plaintiff] had fully complied with the written contract. [The company] had no right to discontinue the inside lights, furnished under the written contract, because [the customer] did not comply with his oral contract for outside lights. The two contracts were separate and distinct."[7]

CLEARLY, from what has been said, a public utility company may quite easily incur substantial liability, through a mistake as to its rights, in enforcing cut-off rules. And this, even though the claim upon which the cut-off is based is not disputed by the customer. It follows, where there is a bona fide dispute over the amount due, the risk of a mistake in invoking cut-off rules is greatly increased. A case in point:

Here the customer disputed the correctness of a bill rendered by the company for electricity, and tendered a check for what he claimed was due. The company declined to accept the check, and some time thereafter invoked its cut-off rule.

The customer sued for damages. Upon the trial the evidence tended to show that, because of a defect in the meter and wiring, the customer had been overcharged. Judgment against the company for $500 resulted. On appeal the higher court, in outlining the rights of a public utility company in enforcing cut-off rules, and in affirming the judgment, in part, made the following statement:

"It is the law in the case of a public service company that it may make and enforce a reasonable rule to refuse service if, after notice, a bill remains unpaid, but in such event it is liable in damages if the bill rendered is unjust or erroneous. If the bill rendered was just and correct and the consumer refused to pay, the cut-off rule may have been invoked. It is not enough that the consumer may believe that the bill is erroneous, . . . He may, in good faith, believe these things; but if he is mistaken in his belief and refuses to pay, he may not recover damages because the service is denied him.

"If a public service company discontinues its service to a consumer, it passes judgment on its own case. Therefore it must know that its rules have been violated after a correct bill has been submitted before it is justified in applying the cut-off rule. If it applies the rule without the right so to do and the customer is damaged thereby, the company is liable for damages naturally flowing from its act in discontinuing the service."[8]

THE foregoing cases constitute a fair cross-section of the case law of the subject. They were, of course, decided upon their facts and circumstances, as all cases of this kind must necessarily be decided. But this in no way detracts from their value, as examples of judicial reasoning on the points involved, and as cases well worth having in mind by public utility executives charged with the enforcement of cut-off rules.

[7] Texas Central Power Co. *v.* Perez (Tex Civ App) PUR 1927 C 4, 6, 291 SW 622.

[8] Kentucky Utilities Co. *v.* Warren Ellison Cafe (1929) 231 Ky 558, 562.

Wire and Wireless Communication

PROPOSED amendment of the 1934 Communications Act to circumscribe the powers of the Federal Communications Commission and to reorganize some of its proceedings, was opposed by James L. Fly, FCC chairman, at the opening hearing on November 3rd before the Senate Interstate Commerce Committee on the Wheeler-White radio bill.

The first effect of such legislation, he told the committee, would be to restore to the major networks "monopolistic control" of the broadcasting industry previously exercised by them. He said they had been trying to recover this control with the aid of the National Association of Broadcasters, which he characterized as a "stooge" organization.

Extension of the right of appeal would serve no useful purpose, according to Mr. Fly, nor would the proposed reorganization of commission procedure, especially the limitation placed on the powers of the chairman which the witness argued would leave him in a position of responsibility without authority.

Asked to point out objectionable provisions of the bill, Mr. Fly cited the following sentence:

> Nothing in this act shall be understood or construed to give the commission the power to regulate the business of the licensee of any radio broadcast station and no regulation, condition, or requirement shall be promulgated, fixed, or imposed by the commission, the effect or result of which shall be to confer upon the commission supervisory control of station programs or program material, control of the business management of the station, or control of the policies of the station or of the station licensee.

MR. FLY declared this was "designed to restore monopolistic control of broadcasting by the big networks." "It would destroy the commission's chain broadcasting regulations, and wipe out the Supreme Court decision sustaining them," he said.

Originally, he said, the networks contended that the FCC regulations would "ruin and destroy" their business. Instead, he said, "they are making more money than they ever made."

The National Association of Broadcasters was accused by the witness of "stirring up small stations" and otherwise aiding the networks to "create a deluge of 'public opinion' against the regulations and in favor of the Wheeler-White bill.

"Whenever NBC and CBS are needled in any way, a cry goes up from Neville Miller, president of NAB."

Senators Reed and Gurney both stated that far from having been deluged with the "propaganda" described by the witness, such information they had received had been obtained only in response to requests. Senator Gurney further declared that his experience of eleven years in broadcasting did not sustain Mr. Fly's charges of attempted domination of stations by the networks.

DEFINITION of the regulatory powers of the Federal Communications

Commission to keep them within more reasonable bounds than the expanding areas of control authorized by the Supreme Court's decision in the chain broadcasting case, and not abolition in toto of the commission's regulations in this field, is the purpose of the Wheeler-White bill, its authors stated at the November 4th hearing before the Senate Interstate Commerce Committee.

Both Senator Wheeler and Senator White took exception to the contention advanced on November 3rd by FCC Chairman Fly that the effect of the proposed legislation would be to restore to the major networks "monopolistic control" of the broadcasting industry which, according to Mr. Fly, they had enjoyed prior to the promulgation of the commission's chain broadcasting regulations and were seeking to recover.

No provision in the pending bill, nor any action contemplated by the committee, would relieve the networks from the necessity of compliance with the anti-trust laws, nor in any way change existing law with respect to the applicability to them of these laws, both Senators declared at the openings of the November 4th hearing.

"The point is, you never had, under the present law, the power to do what you have done," Senator Wheeler told Mr. Fly. "What we are looking for is regulation in the public interest, not complete control of radio stations. And the Supreme Court decision now turns over to the commission regulation of every detail."

Senator White asserted that it was not the purpose of the bill to wipe out all the chain broadcasting regulations promulgated by the commission, and that the merit of these was not the point at issue.

"If you had come to Congress and asked for authority to do it, I'm inclined to think you would have gotten pretty much what you wanted," he told the FCC chairman. "In fact, I have worked out some amendments that would incorporate the bulk of your regulations into law. I may even be able to sell them to you."

"I think you will, sir," Mr. Fly replied. "And I am happy to hear that, because the big networks are apparently suffering under the misapprehension that the Wheeler-White bill will repeal the regulations."

"Not at all," Senator White insisted. "The purpose is that you shall not have the power to interrogate an applicant for a station license and try to impress upon him a policy or line of thought not previously entertained by him."

Mr. Fly protested that such was not his practice, nor had the commission, as suggested by Senator Wheeler, ever sought "to regulate in any detail the business of stations."

"What we have done is to lift the restraints placed on stations by the New York network caste," he added, "and not to have the public interest farmed out to New York and Hollywood."

So great has been the development of radio, and so great the demand for the new uses to which it could be put, many of which even now are vital requirements of the war effort, that these subjects would constitute the agenda of a conference to be held in Washington on November 17th, Mr. Fly told a press conference the afternoon of November 4th.

Members of various government bodies and industries concerned with its work, about thirty in number, had been invited to participate, he said. Included in the group will be the members of the War Communications Board, the Inter-Departmental Radio Advisory Committee, and representatives of the radio technical planning group recently organized to make studies in the field of radio. The all-day meetings would not be open to the public nor the press.

FACTS concerning the refusal of President Roosevelt last September 7th to transfer radio intelligence activities of the Federal Communications Commission to the War and Navy departments were disclosed during Fly's testimony on November 5th before the committee. Senator Charles W. Tobey, Republican of New Hampshire, brought up the subject while Chairman Fly was testifying. The Senator read into the record the recommendations signed jointly by the

two secretaries and dated February 8th, requesting the transfer, and asked Mr. Fly if he had known of them.

"Oh, yes, everybody knows of them," Mr. Fly replied. "They were contained in a secret document which was given publicity by the counsel for the Cox committee."

"I am further informed that the President denied the request eight months later, following 'careful study of the suggestion by the staff of the executive offices,'" Senator Tobey continued, reading from a letter before him. "Who at the White House, if you know, does he mean by that?"

Mr. Fly said he did not think the reference was to the White House staff but to the staff of all the executive offices concerned, "principally the Bureau of the Budget," adding that he knew a survey had been made and that the findings of the Budget Bureau were contrary to those in the recommendations.

"But is it possible that more importance could be attached to the findings of such a group than to the recommendations of joint chiefs of staff, and the secretaries of War and Navy?" Senator Tobey demanded. "What is your own opinion? Did you oppose the proposed transfer?"

"I did not think it would serve a constructive purpose," Mr. Fly replied. "I knew that the facts were not anywhere near as stated."

Senator Tobey asked if the witness wished the committee to believe they had been misrepresented by Admiral Leahy.

"Not exactly," Mr. Fly replied. "Not knowingly. But he was wrong."

Actually, he declared, the letter signed jointly by the two secretaries was not an expression of their own views but those of "some one in some of those departments who thought it would be a good idea to get control of our very excellent organization."

Newspaper ownership of stations, and the question of responsibility of radio stations for statements made over the air also came in for discussion at the November 5th session.

Mr. Fly was asked what his policy was in regard to newspaper ownership, and whether in fact he thought the law conferred on him the power to refuse to grant a license to a newspaper applicant. He replied that no rule had been laid down by the commission.

* * * *

A NEWSPAPER sprang to life on November 5th at Schenectady as characters stepped from the pages and performed, through television, before fifty editors and publishers. The demonstration was arranged by the General Electric Company through the coöperation of *The Albany Times-Union*. The company, a pioneer in electronics, used a graphic technique to illustrate how it thought television might supplement newspapers in covering the news after the war.

Printed pages of a special 10-page edition of the *Times-Union* first were projected on screens of television sets. Then stories, want ads, display advertisements, comic cartoons, and other features were reënacted in a big studio, much like those used in making moving pictures in Hollywood.

Powerful blue lights illuminated the heavily canvas-padded, big studio with an eerie blaze. Traveling cranes placed lights and loud-speakers before the acts. Complicated rows of electric buttons in a control booth directed the screening of the resulting "talkies."

The reënactment of the newspaper stories and features appeared, by contrast, remarkably natural on the screens of regular household television sets. A few such sets were manufactured and marketed by various companies before the war began. It is no secret that they since have been considerably perfected and are expected to be marketed extensively once production may be resumed. Combination television, short-wave, standard broadcast, and the relatively new frequency modulation receiving sets are expected by the trade to be available for as low as $150.

In bringing the newspaper to life, a war commentator, using a large map, pointed out exactly what the latest bul-

letins explained had happened. Financial news was told by the use of silver dollars stacked in piles and used as "live" charts to illustrate the government's new tax proposal.

Girl models, wearing late style creations, stepped from newspaper display advertisements. A baby buggy, offered for sale in a want ad, was wheeled into the scene for demonstration. Even a more modern touch was supplied when a housewife, seeking a maid, was interviewed by the maid.

General Electric operates a telecast station, and also a television relay station, from atop the near-by Helderberg mountains. The relay station is used to pick up and rebroadcast programs from the National Broadcasting Company television station in New York, 129 airline miles away.

* * * *

GOVERNMENT officials are making increased use of dictaphones and concealed stenographers to obtain records of telephone conversations and remarks made by visitors, a survey of Washington offices indicates, according to the *Chicago Daily Tribune.*

Some critics of the practice described it as merely bad taste and an invasion of private rights, but one Congressman asserted that congressional inquiry might be justified. It was generally agreed, however, that no illegal acts are being committed.

"Recording of telephone conversations is completely abhorrent," Representative Charles A. Halleck, Republican of Indiana, a member of the House Interstate Commerce Committee, said. If definite information that the practice is widespread and harmful could be found, he added, a congressional inquiry would be in order.

Wire tapping, a violation of the Communications Act of 1934, is interpreted by authorities to mean the mechanical interception of telephone messages without the knowledge of either party to the conversation. Recording of telephone conversations to government offices is done with the knowledge of one of the parties and is accomplished by having a stenographer listen in on an extension.

No Federal statute forbids the dictaphone recording of office conversations, an official of the Department of Justice said.

Senator Burton K. Wheeler, Democrat of Montana, chairman of the Senate Interstate Commerce Committee, said that widespread recording of telephone conversations in Washington is common knowledge, but that it was not an issue before his committee.

John O'Connor, former New York Congressman with law offices in Washington and New York, raised the question of eavesdropping on telephone conversations in a letter to the New York Telephone Company. He asked if it was true, as reported by a news columnist, that "all phone calls to Washington are recorded." He wrote:

> I shall thank you to advise me of the real fact, not that, if it is true, it will in the least deter me from saying over the phone anything I desire to, including that most of the radical, starry-eyed, un-American New Dealers are continuing to undermine our form of government for their own personal and financial interests.

IN a letter recently made public, Arthur W. Page, vice president of the American Telephone and Telegraph Company, told O'Connor that no telephone company permits "interception" of telephone conversations. He cited the Communications Act, which forbids unauthorized publication of communications. Page explained that the company uses the term "recording" to mean that a record is made of toll calls for billing purposes.

The Federal Bureau of Investigation and the Army and Navy intelligence services would not comment on whether they resort to wire tapping in investigations. A Justice Department official, however, said that the FBI has an administrative ruling that no agent may tap a telephone wire without the approval of J. Edgar Hoover, FBI director, who must in turn obtain authority from the Attorney General.

Financial News and Comment

By OWEN ELY

Competitive Bidding

THE utility industry is much interested in the current hearings before the Interstate Commerce Commission on the proposal to make the sale of all new railroad securities subject to competitive bidding. While the commission has thus far maintained a somewhat open mind on the question, several controversies have developed in the past year or so over private sales of rail securities. Halsey, Stuart & Co. of Chicago and New York, and Otis & Co. of Cleveland strongly advocate competitive bidding, while Morgan Stanley and Kuhn, Loeb prefer the old-fashioned method, and most of the investment banking fraternity appear to be in the latter camp.

Following the controversy last June over the sale of $28,483,000 Pennsylvania, Ohio & Detroit 3¾s to Kuhn, Loeb & Co., the ICC asked all those interested in rail finance to file briefs on the question of competitive bidding. Over twenty briefs have been filed, principally for the opposition.

While the present management (headed by Robert R. Young) of Chesapeake & Ohio and its affiliates (Nickel Plate and Pere Marquette) favor competitive bidding, other roads as represented by the Association of American Railroads appear strongly against the proposition. The association in its brief opposes *compulsory* competitive bidding, believing that "it is far wiser for the commission to retain its present plenary and flexible authority over railroad financing without strait jacketing railroad management or itself by regulations."

Individual briefs were filed by Erie Railroad, New York Central, Pere Marquette, the Investment Bankers Association of America, the National Association of Securities Dealers, Morgan Stanley & Co., Kuhn, Loeb & Co., the Metropolitan Life Insurance Company, the Equitable Life Assurance Society, and others.

THE briefs in many cases refer to the operation of Rule U-50, issued by the SEC in 1941 to require competitive bidding for utility issues. The rule was apparently an outgrowth of the unsatisfactory operation of Rule U-12F-2, which was designed to enforce arm's-length bargaining between holding companies or their subsidiaries and "affiliated" underwriters. The brief filed by the Investment Bankers Association stated:

> The Investment Bankers Association opposed Rule U-50. It was not then and is not now satisfied that it was necessary or advisable. The special committee does not believe that the rule has worked in the interests of investors. Members of this association who have been distinctly successful in purchasing securities at competitive bidding share in this view and do not believe they can do as good a job for investors or the issuer as in negotiated deals. As already indicated, the Securities and Exchange Commission's expressed expectation as to the effect of the rule on the small dealer has not been borne out by developments.

The brief advanced nine arguments against competitive bidding including the point that compulsory competitive bidding would force the concentration of distribution into the hands of relatively few underwriters and dealers. This contention is borne out by our analysis of competitive bidding since Rule U-50 came into effect (FORTNIGHTLY, October 14th issue, page 498). Over half the business has been handled by five firms (as syndicate heads).

The brief pointed out that competitive

bidding tends to remove flexibility from the capital markets: "Compulsory competitive bidding for securities on the auction block is not the best available means for judging the reasonableness of prices and spreads, as is proved by the wide variations between bids."

Some of the briefs indicate that "personalities" have crept into the debate. Kuhn, Loeb in Appendix "A" of its brief pointed out that since competitive bidding on utility issues began it has made successful bids on 3 occasions out of 13 attempts, while Halsey, Stuart was successful only 4 times out of 19 bids submitted. Thus Kuhn, Loeb's batting average was 23 per cent compared with Halsey's 21 per cent. Otis & Co., "the people who claim we are not successful bidders," had made only 2 bids (as managers), ranking sixth out of 9 in one case and the lowest of 5 in another (about 11½ points below the winning bid).

Evidently Kuhn, Loeb resented certain innuendos in the Halsey, Stuart-Otis brief that "failure by railroads to adopt competitive bidding voluntarily is mainly due to the monopolistic position of two banking houses . . . the leading bankers who opposed competitive bidding seventeen years ago warned of dire results when the commission adopted such a requirement for equipment trusts. They have similarly warned of dire results at each extension of competitive bidding. In every case experience has belied their prophecies. Their arguments against competitive bidding have proved as bankrupt as many of the carriers which relied upon them for financial advice."

The brief held that competitive bidding is "an established and successful practice," and "the recognized method for the sale of corporate securities requiring public approval"; that it has widened the market for corporate securities and lowered the cost of raising capital; that private negotiation tends to be monopolistic; and that competitive bidding is required to protect public interest. In discussing and combating traditional arguments against competitive bidding, the brief admitted that the practice increases the market risk and that occasionally this results in a "sticky" issue. The firms candidly admit that "we have had several such issues in recent years and in each instance, having retained the securities, have seen our judgment vindicated."

It is unfortunate that this clash of interests entered into the discussion of competitive bidding. In our opinion it is entirely unfair to blame the wave of railroad bankruptcies on the two leading railroad banking houses. Surely the major blame should rest on the roads themselves, the Interstate Commerce Commission, and the congressional committees charged with the proper regulation of rail finance. The function of the investment banker is primarily to advise his clients on the best time and method to raise desired funds—not necessarily to advise against borrowing any money because of fears of long-term adverse trends. At the same time, the investor's future position must not be completely ignored, and economic uncertainties must be weighed in fixing the offering terms. As Morgan Stanley points out in its definition of the functions of the investment banker, "he must have in mind the most desirable distribution of securities, and not only the cheapest method . . . He has a real responsibility to the investing public for the securities that are sold under his sponsorship and . . . must act for the benefit of both issuer and investor."

Morgan Stanley holds that competitive bidding for rail securities in the past two years has produced overpricing, which is bad not only for the investor but the issuer. Issues notably overpriced were the Cincinnati Union Terminal, the Terminal Railroad Association of St. Louis, and the Erie Railroad (Ohio division). The underwriting spread naturally tends to be lower in competitive bidding, the firm points out, because the underwriter does less work and assumes less responsibility.

The public hearing held by the ICC on November 5th developed little in the way of outstanding arguments not already

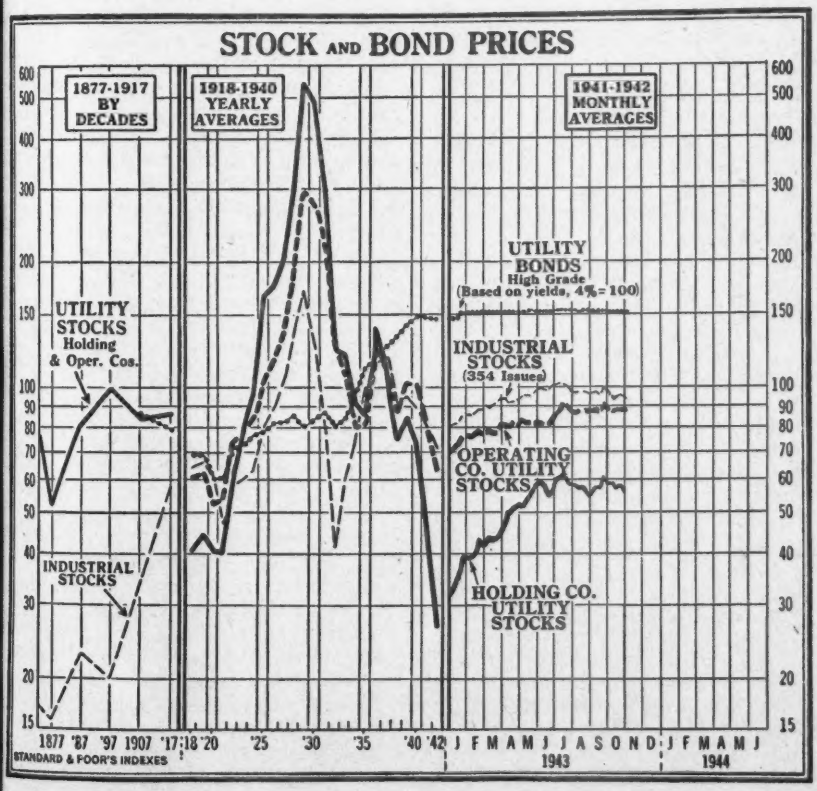
presented in the briefs. Arthur H. Dean representing the IBA told the commission that if competitive bidding becomes compulsory "small investment houses, small investors, and small banks will be put out of business . . . small investment houses are fast disappearing under the public utility rule of the SEC and will disappear faster if the ICC should apply such a rule to railroad securities."

Senator Harry S. Truman, chairman of a Senate subcommittee that investigated some scandals of railroad finance of the 1920's, argued in favor of competitive bidding as in the best interests of security owners.

The reaction of the ICC to this deluge of pro and con material will be awaited with interest. Should the commission refuse to install compulsory bidding, this would naturally tend to weaken the position of the SEC, and vice versa.

However, it should be noted that the SEC in some cases has permitted exceptions to U-50 for special reasons. Recent instance is the offering of Idaho Power stock.

It might be a valid speculation that the SEC feels that competitive bidding is better suited to the larger and higher-grade issues. Its unfortunate experience with the Louisville Gas & Electric common stock issue demonstrated the difficulties of applying it to junior securities.



New Financing

CENTRAL POWER & LIGHT (Middle West system) on September 27th filed with the SEC a proposal to issue $25,000,000 first mortgage bonds due 1973 and an SEC hearing was held October 21st. The issue is scheduled for competitive bidding possibly around the end of November.

Southern Colorado Power on October 21st registered $5,500,000 first mortgage bonds due 1968. Competitive bidding is expected shortly. The offering complies with an SEC order entered August 23rd which made the bond refunding a condition precedent to a proposed recapitalization plan. The company will also issue $1,200,000 serial 10-year notes, to be sold privately.

Blackstone Valley Gas & Electric Company on October 23rd registered $11,300,000 first and collateral trust 3s due 1973.

THE Public Service of Oklahoma financing (sale of additional 3½s due 1971) has apparently been deferred. The Laclede Gas Light refunding has proven slow, but stockholders approved the amended plan (approved by the Missouri Public Service Commission but still before the SEC) November 9th.

Ogden Corporation on September 14th registered 91,577 shares of Derby Gas & Electric common stock, which it owns. Ogden proposes to sell the stock as a step in its plan for divestment of utility holdings, in accord with the Utility Act. SEC hearings were held October 18th. The sale will be made through competitive bidding. There is currently an over-counter market for minority stock around 22.

The important Utah Power & Light refunding plans are being revised due to difficulties arising from the recent rate cut and the heavy write-offs proposed by regulatory agencies. It is understood that the difficulty was principally with the proposed junior financing, and a new plan is expected in the near future. The company's $28,300,000 first 5s and $4,100,000 4½s mature February 1, 1944.

Public Service Electric & Gas Write-off Ordered

PUBLIC SERVICE ELECTRIC & GAS has been ordered to show cause why it should not reduce its plant accounts by $105,178,869. The Federal Power Commission was joined by the New Jersey public utility commission in the order, due to the fact that the gas business is intrastate (the electric being considered interstate). Roughly one-third of the proposed write-off is in gas plant account, and two-thirds in electric. The FPC proposed that $53,104,410 of electric plant account should be written off immediately, while the remainder ($14,789,314) might be eliminated gradually.

According to the 1942 balance sheet electric plant was carried at $362,232,769, less a reserve of $69,732,085; and gas plant at $161,964,202, less a reserve of $19,834,529 (which may include miscellaneous property). The aggregate write-offs thus amounted to about 20 per cent of the gross plant account. Earned surplus was carried at $14,880,893 and common stock at $196,205,800. Since the latter figure represents only the assigned value against the no par common shares there would seem to be no reason why the total write-offs—assuming that the company agreed to it—could not be made out of the common stock equity. However, it is becoming the practice to charge part of the write-off to future earnings. Doubtless this is agreeable to the utility companies because it may help sustain the rate base and reduce Federal taxes. Public Service of New Jersey, the parent company, has a common stock equity (including surplus) of about $124,000,000, against no par shares, hence the proposed write-offs, under the most adverse program, would not destroy that equity.

If the $14,789,314 item should be eliminated over a 15-year period, this would represent about $1,000,000 annually. Assuming that it could be taken as a tax deduction, some 81 per cent would be absorbed in Federal excess profits taxes; and the balance would amount to about 4 cents a share on the common stock.

PUBLIC SERVICE ELECTRIC & GAS on October 30th filed a declaration with the SEC in which it proposed to reduce the stated value of its common stock from $196,205,800 to $170,000,000, transferring the difference of $26,205,000 to capital surplus. This amount, together with earned surplus, would fall short of the immediate write-off ordered by the FPC by some $12,000,000 and would make no provision for a gas plant write-off. The company stated that the amount, together with earned surplus and reserves, would be sufficient to cover any adjustments which might be lawfully ordered by the FPC or the state commission. Chairman McCarter apparently regards the orders as confiscatory and indicated that the issue would be carried to the highest court of jurisdiction in order to protect the rights of stockholders. Excerpts from his statement appear on page 715.

There is no indication that the write-offs will involve any substantial rate reductions. A spokesman of the local commission was quoted by Dow Jones as stating that the gas order was entered as part of a long-range program for a uniform accounting, and would have no immediate bearing on rates. However, it was indicated by a member of the commission that a reduction in valuation "might be a factor eventually in lower rates."

Among the findings reported by Federal and state investigators were the following: United Electric stock carried at $17,910,829 over its cost to the parent firm and UGI. A $6,723,232 excess on books over actual cost of either securities or property received from Public Service Corporation and Public Service Coördinated Transport. A $3,550,353 excess of book charges for securities of Paterson & Passaic Gas & Electric Company over what they cost UGI; $2,744,981, representing profit to Public Service Railway Company, included in amount at which Newark Terminal building was transferred to Electric & Gas unit; $6,085,742 representing profits to Public Service Production Company and United Engineers & Constructors (associated firms) and included in construction costs on the utility firm's books; $1,862,041 in discounts, dividends, and other charges, included in the construction cost of the Kearny generating plant; also $913,470 profit to Public Service Production Company, on the same job.

Consolidated Natural Gas

A NEWCOMER to the list of natural gas stocks is Consolidated Natural Gas, currently trading on the New York Stock Exchange on a "when-distributed" basis at 27½. A 20-page analysis of the stock was recently issued by Kidder, Peabody & Company, and the company itself has mailed to stockholders an illustrated brochure describing the properties and operations.

Consolidated owns five natural gas companies which were formerly subsidiaries of Standard Oil Company of New Jersey. Four companies—Hope, East Ohio, Peoples, and River Gas Company—are classed as utilities, since they have retail distribution, while New York State Natural Gas is a production and transmission company, selling its gas at wholesale. The five companies form a well-integrated system, the product of more than fifty years' growth, operating in parts of West Virginia, Ohio, Pennsylvania, and New York.

Capitalization consists of $2,678,089 subsidiary long-term debt and 2,728,359 shares of common stock of $15 par value. After adjusting income taxes and other items, earnings per share in recent years have been as follows:

1943 Est.	$3.19
1942	2.81
1941	3.43
1940	3.88

The stock will be distributed to stockholders of Standard Oil December 15th (to holders of record November 15th). By this means Standard will divest itself of holding company status under the Utility Act, with respect to this group of companies.

INTERIM EARNINGS REPORTS

	End of Period	12-month Period Last	Prev.	Inc. %	3-month Period Last	Prev.	Inc. %
Electric-gas Holding Companies							
American Gas & Elec. *Consol.*	Aug.	$2.34	$2.18	7	.50	.26	93
American Power & Lt. (pfd.) *Consol.*	Aug.	9.71	3.89	150	2.23	.58	286
Parent Co.	Dec.	3.18	3.98	D20	..	..	..
American Water Works *Consol.*	Sept.	.59	.97	D39	..	..	..
Parent Co.	June	.16	.21	D24	..	..	..
Columbia G. & E. *Consol.*	Sept.	.41	.17	142	..	..	..
Com. & Southern (pfd.) *Consol.*	Sept.	9.17	6.63	38	1.84	1.24	49
Elec. Bond & Share (pfd.) *Parent Co.*	June	4.24	5.12	D17	1.08	1.09	D1
Elec. Pr. & Lt. (1st pfd.) *Consol.*	Aug.	11.99	10.42	15	1.50	.80	88
Parent Co.	Aug.	2.05	1.38	48	..	..	..
Eng. Pub. Service *Consol.*	Sept.	1.48	.99	49	..	..	..
Parent Co.	June	.55	D.06	..	..	..	..
Federal Lt. & Trac. *Consol.*	June	1.79	1.48	21	.41	.31	32
L. I. Lighting (pfd.) *Parent Co.*	Sept.	5.63(c)	2.50(c)	127	..	..	..
Middle West Corp. *Consol.*	June	.59(a)	.48(a)	23	.22	.20	10
Nat. Pr. & Lt. *Consol.*	Aug.	1.02	.56	82	.21	.10	110
Parent Co.	Aug.	.03	.10	D70	..	..	..
Niagara Hudson Power *Consol.*	June	.33	.40	D18	..	..	..
Parent Co.	Dec.	.12	.03	300	..	..	..
North American Co. *Consol.*	June	1.72	1.88	D9	.40	.40	..
Parent Co.	June	1.18	1.57	D25	..	..	..
Nor. States Pr. Del. (pfd.) *Consol.*	June	6.42	7.10	D9	..	..	..
Ogden Corp. *Parent Co.*	June	.09(a)	.03(a)	200	..	..	..
Public Ser. Corp. of N. J. *Consol.*	Sept.	.80(d)	.54(d)	48	..	..	..
Std. Gas & Elec. (pr. pfd.) *Consol.*	June	12.92	9.00	44	2.61	2.03	28
Parent Co.	June	2.83	2.13	32	.63	.49	29
United Gas Improvement *Consol.*	Sept.	.48	.55	D13	..	..	..
Parent Co.	Sept.	.46	.52	D12	..	..	..
United Lt. & Pr. (pfd.) *Consol.*	June	10.41(b)	6.46(b)	61	..	..	..
Electric-gas Operating Companies							
Boston Edison	Sept.	2.24	1.98	13	.34	.36	D6
Commonwealth Edison *Consol.*	Sept.	1.73	1.88	D8	..	..	..
Conn. Lt. & Power	Sept.	2.62	2.58	2	..	..	..
Cons. Edison N. Y. *Consol.*	Sept.	1.84	1.54	20	.18	D.01	..
Parent Co.	Sept.	1.90	1.45	31	.10	.11	D9
Cons. Gas of Balto. *Consol.*	June	4.02	3.58	12	.87	.91	D4
Detroit Edison *Consol.*	Sept.	1.32	1.42	D7	..	..	..
Houston Lighting & Power	Sept.	5.83	4.41	33	..	..	..
Indianapolis P. & L. *Consol.*	Sept.	1.94	2.04	D5	..	..	..
Pacific Gas & Elec. *Consol.*	June	2.26	2.08	9	..	..	..
Public Service of Indiana	Sept.	1.95	1.82	7	..	..	..
San Diego Gas & Elec.	Aug.	.95	.97	D2	..	..	..
Southern California Edison	Sept.	1.34	1.84	D27	.43	.55	D22
Gas Companies							
Amer. Lt. & Trac. *Consol.*	Sept.	1.53	1.81	D15	..	..	..
Brooklyn Union Gas	Sept.	2.23	1.76	27	..	..	..
El Paso Natural Gas *Consol.*	Aug.	3.50	3.22	9	..	..	..
Lone Star Gas *Consol.*	Sept.	.74	.91	D19	..	..	..
Oklahoma Natural Gas	Aug.	2.85	3.75	D24	..	..	..
Pacific Lighting *Consol.*	Sept.	3.14	3.63	D14	..	..	..
Peoples Gas Lt. & Coke *Consol.*	Sept.	6.31	6.06	4	.98	1.14	D14
Southern Natural Gas *Consol.*	June	1.85	1.83	1	..	..	..
United Gas Corp. (1st pfd.) *Consol.*	Aug.	18.17	17.38	4	2.51	1.83	37
Parent Co.	Aug.	17.80	13.60	31	..	..	..
Telephone and Telegraph Companies							
American Tel. & Tel. *Consol.*	Aug.	9.42	9.14	3	2.38	2.11	13
Parent Co.	June	8.80	9.01	D2	2.28	2.15	6
General Telephone *Consol.*	June	2.18	2.42	D10	..	..	..

D—Deficit or decrease. (a) Six months. (b) Estimate based on report of United Light & Railways Company. (c) After income appropriations. (d) Nine months.

What Others Think

The ATA "Convention in Print"

THE war emergency has resulted in a lot of innovations affecting normal industrial enterprise, but one of the most unique, as well as interesting, was the decision of the American Transit Association to hold its annual convention in type rather than in person. One obvious reason for this decision, of course, was the government restriction and urgent recommendations that large convocations of national business and trade associations should be suspended if at all possible during the duration to keep the load off the railroads and overcrowding of hotels in the favorite convention cities.

More important, perhaps, as far as the American Transit Association is concerned, is the fact that every one of these busy officials is up to his ears every working hour of every working day handling the details of one of America's most delicate and critical war-time problems—moving the masses to and from work.

And so the ATA decided to hold its sixty-second annual convention in the form of its first so-called Convention in Print. This is in the form of a well-printed pamphlet style magazine without formal cover—one edition for each "session." There are three sessions of Convention in Print published during three consecutive weeks. The first session, which made its appearance on October 15th, was devoted to the discussion of "Transit—An Essential Part of Community Planning," and was given over to a collection of papers from various experts on that subject, both within and without the transit industry.

THE first paper was from the pen of Joseph B. Eastman, director of the Office of Defense Transportation, whose message might be summed up in the following paragraphs:

> Postwar planning, as such, is so definitely beyond the horizon of my present world that I dare not do more than urge that the best thinkers in your industry apply themselves assiduously to the task. Your vehicles will, of course, be modernized as soon as possible after the reconversion of manufacturing facilities. The financial risks which your industry will run in choosing the type and size of vehicle and the rate of fare cannot be lightly dismissed. In solving a number of your postwar problems, the interests and rights of labor will be so vital to the public welfare that labor and management must do much of this planning together.
>
> For thirty years I have been an interested observer of the trend of the local transit industry, and never in that period have there been times when the industry did not have crucial problems that appeared almost insoluble to an outside observer. Nevertheless the industry has survived to play its present extremely vital rôle in the prosecution of the war. With this record and the forethought which you are already giving to the postwar period, one cannot have any doubts about the industry's vitality to survive postwar readjustments.

The next paper was the product of Powell C. Groner, president of the American Transit Association, who stressed a warning note:

> We can certainly anticipate fiercer competition than yet experienced. The ingenuity of the private automotive industry can be expected to produce vehicles at a price and of a quality which will have tremendous appeal. We must be prepared to meet that competition with transit equipment of equal caliber, since the obsolete vehicles forced into service by necessity will no longer attract patrons who do not have to use them. I am confident that we can rely upon the resourcefulness of our manufacturer members to make available the types of modern equipment needed to meet the competitive conditions with which we will be confronted. The operating companies, therefore, should make every effort to have their financial affairs in such order as to be able to purchase such equipment.
>
> Improved earnings, after years of straitened circumstances, afford us the opportunity to do so.

HARLAND BARTHOLOMEW, eminent city planner, carried on the discussion by dealing with the phase of planning the future community itself. Mr. Bartholomew said:

> Of highest importance in such a program —a master key to the sound, stable, well-balanced city—is a . . . modern transit system.

Bancroft Hill, Baltimore railroad construction engineer, outlined his so-called "Baltimore plan" for deferred maintenance as a major provision for postwar reëmployment. The idea of this plan is to provide a way to enable private industry to carry the heavy burden of postwar readjustment without having to turn to the government for funds. It is a plan to prevent corporations from being taxed at the highest rates now prevailing through government encouragement of reserves for maintenance which cannot be carried on during the war.

Walter H. Blucher, executive director of the American Society of Planning Officials, discussed "Stability and Orderly Development the Goals of Community Planning." He said everyone is familiar with the more obvious things that are wrong with our cities, such as our blighted areas, our obsolete and sometimes antique transportation facilities, our inadequate open spaces, but that there is no similar realization of corrective possibilities. Mr. Blucher stated in part:

> Can we rebuild our cities on a single pattern so that these things can be avoided? Since the modern city is dynamic and not static, since there are many kinds of large cities representing various political aspects, economic backgrounds, social and racial groups, it would be folly to try to fix a pattern.
>
> We should be able to agree, however, that it shouldn't be necessary for people to travel the long distances they now do between homes and places of work (with large vacant areas between the two). Certainly a city is possible where people can have adequate neighborhoods in closer proximity to their work so that more people can walk to work. And certainly we already have enough knowledge to lay out transportation routes and to build the vehicles which will move such people as must move quickly, safely, pleasantly, comfortably, and cheaply. Our cities ought to enable people to change their jobs if they wish, and change their residences, and still be in desirable neighborhoods which are in fairly close proximity to their work.

This, of course, means a better rearrangement of our communities, a better relationship between residence and factory or office, and between residence and park and theater and bank and library. He thinks it is possible to correct these things just as we have managed here and there to shift a highway or railroad or a factory or a residential district. "Suburbia," the temporary solution of running away from present discomfort in central city areas, is simply a postponement of a destroying reënactment of the same difficulties.

Visualizing the city of the future, Mr. Blucher said that it must provide for the restoration of the neighborhood life within the city, protected from encroachment of undesirable usage, and maintained in that character for all time to come, with comfortable, well-arranged homes, adequately lighted, spaced, and serviced, making use of the most economical means of transportation. He foresaw that under such circumstances "public transportation will become even more important than it has been in the past."

JACOB CRANE and Winters Haydock, of the National Housing Agency, jointly dealt with the proposition of "Housing and Transportation after the War." The key to their discussion is found in the proposition that "housing does not make a city" though a "desirable neighborhood is essential for family life."

Then there is the opinion of a leading architect, Ralph Walker, who says that the short work week has influenced our week-ends to the extent that those who can afford them crowd their opportunity to the suffocation point, "striving for a few hours of escape into nature's green —away from brick and stone." Mr. Walker goes on to discuss the more uniform use of land and the significance to transit of the varying trends of city development.

At this point, Charles T. Stewart takes up the argument by enumerating the

"SINCE I'VE BEEN USING THIS 'SECOND FRONT' WINDSHIELD FOR STICKERS, DRIVING IS MUCH EASIER"

"steps required to revitalize our decaying cities," and brings into prominence the idea of suburban competition and the legislation necessary to protect the "character of neighborhood."

And there it is, an expression by the leading experts on the subject of what it takes to promote the idea that "transit *is* an essential part of community planning."

THE second "session" of Convention in Print, dated October 22nd, was devoted to the topic "Making a Transit Plan." Guy A. Richardson, director of the ODT Division of Local Transport, led off with a review of the history of his division, coupling its development with the war needs of the transit industry. From that point, Mr. Richardson, to assist the industry in working with his office, graphed the responsibilities and defined the functions of each section of the division of local transport.

In the course of his presentation, Mr. Richardson paid tribute to the transit industry and the transit rider. He said: "The companies and the communities which they serve have met the situation (war emergency) for the most part as a result of their own efforts, voluntarily and willingly, and are to be congratulated on the results."

Mr. Richardson was not at all hesitant about stating that "Our first step is to win the war," pointing out there are

still many hardships ahead, particularly in the field of maintenance, where shortages of materials, replacement parts, and skilled man power are yet to be overcome. At this point, emphasis was placed on the reorganization of ODT's field force, and the manner in which the nine regional offices are prepared to work with the transit industry in their respective territories.

The next paper was the product of Edward Dana, president and general manager of the Boston Elevated Railway Company, who sounded a note of warning to the effect that every important act of transit management in a great metropolitan area must run the gauntlet of approval or disapproval of a multiplicity of local authorities—each having veto power. This, he said, discourages progress and improvement.

Mr. Dana suggested a postwar agency in each community or area so constituted as to become the champion of the community's transportation needs. He commended the idea of labor management committees and recommended the combination of labor management committees and war transportation committees to accomplish this purpose. Such an agency, Mr. Dana added, would in fact be in a position to "clear away the obstacles to transit improvement."

Any meeting devoted to postwar transit planning is a logical forum for the consideration of Cleveland's proposed new transit plan, as discussed by W. J. McCarter, general manager of the Cleveland Transit System. This plan was only recently formally presented in Cleveland as a proposal for meeting that city's long-time transit needs. In presenting the plan, Mr. McCarter emphasized the technical points of the project by means of route maps and operating charts which visualized the program in detail.

At this point the Convention in Print was thrown open for group discussions by leaders of the industry. The subjects dealt with included the following: "Future of Transit and Community Closely Linked"; "How Much Auto Competition?" "Modernized Equipment and Routing—A Postwar Must"; "What Policies When Peace Comes"; Financing Postwar Plans."

The second session closed with a series of reports by the presidents of ATA affiliated organizations, wherein the transit outlook was presented from the viewpoint of the several departments which play a part in the functioning of a successful company.

The final session of Convention in Print dealt with "Outlook for Postwar Equipment and Maintenance." Dated October 29th, this third session featured a balloting for officers by mail, as a result of which E. D. Merrill, president of the Capital Transit Company of Washington, D. C., was elected to the presidency of the American Transit Association. Colonel Roane Waring, head of the Memphis Street Railway Company, was elected vice president, and E. A. Tuson, general auditor of Public Service Coördinated Transport, New Jersey, was returned to the office of treasurer.

A certification of the mail ballot, together with the reports of officials, was published.

E. D. Pardoe, chief of the bus and electric railway section of the WPB Transportation Equipment Division, led off the final session with a paper entitled "The Transit Industry Can Profit from War-time Equipment Experience." In developing his subject, Mr. Pardoe emphasized the need for continued standardization, and coupled that need with the lessons learned through the development of new methods and new sources of supply.

The "profit," from these war-time experiences, Pardoe declared, will be determined by "the extent to which the transit industry studies . . . and incorporates such experience into approved programs and methods for the future."

Then followed an important series of presentations by top executives representing six leading bus manufacturers, under the general heading, "Trend and Timing of Bus Improvements."

THE convention further considered the practical needs of the industry by treating of the subject "Electrical Developments Aid Passenger Transport." Under this heading, E. E. Kearns, transportation department of the General Electric Company, opened up the discussion with his treatment of "New Electrical Apparatus for Transit Service." A. J. Manson, light traction section, Westinghouse Electric & Manufacturing Company, carried on with the theme by arguing the "Increased Importance of Electric Transportation."

Other papers discussed the trolley coach, the 1945 model of the so-called "PCC car," prospects for postwar track design, lighting standards.

Convention in Print also included many "exhibits" of manufacturers showing up-to-date equipment for the most improved designs that will be available in the future.

—F. X. W.

Trouble within REA

As a subcommittee of the Senate Agriculture Committee prepares to investigate the affairs of the Rural Electrification Administration, the attitude of REA's principal "hometown" newspaper—the *St. Louis Post-Dispatch*—is worthy of passing note. It was the *Post-Dispatch* which first intimated that ex-Senator Norris of Nebraska had been offered the job of REA Administrator and had turned it down. This was a signed story from a Washington correspondent, but it is not clear that either the offer or the refusal came before the recent controversy involving Administrator Slattery's own leadership.

However, there is no question about where the *St. Louis Post-Dispatch* stands editorially with regard to Slattery's differences with those who have attempted to bring about his ouster. The *Post-Dispatch* stands squarely in Administrator Slattery's corner, stating:

> Harry Slattery, administrator of REA, did a courageous and unselfish thing when he turned down a White House suggestion that he accept an assignment to study rural electrification systems abroad. The suggestion, by an intermediary of the President's, was made to get Slattery's resignation and so pacify the National Rural Electric Cooperative Association (NRECA), which has been trying to oust the REA Administrator ever since he stymied its plans to use co-ops' funds to operate an insurance scheme
>
> Mr. Slattery must be a pretty tired man by now. He would be more than human if he were not attracted by the opportunity to chuck the whole mess and travel to other countries and study the subject which has so much appeal to him. But he is sticking this one out. He says, very properly, that if he quit now, his action might be construed as an admission that he was wrong and his enemies were right.
>
> He might also have said that if he resigned now there would be a very strong possibility that rural America might have to kiss REA good-by. REA has been a storm center so long that it has been seriously damaged, and its interior affairs appear from the outside to be in a condition bordering upon anarchy. The Secretary of Agriculture, Mr. Wickard, has installed a deputy administrator, William J. Neal, with orders to run REA, the legal administrator notwithstanding. Under such circumstances, morale and efficiency within the organization must be at low levels. A Senate subcommittee which asked the deputy administrator for certain documents received, in response, six trunkloads of papers—a gesture strongly suggestive of resentment and contempt; strongly suggestive, too, of a less than complete condition of responsibility within the agency.

THE *Post-Dispatch* editorial concluded that REA is "headed for disaster" if it is to be made the pawn of whatever outfit has the most votes, whether that outfit is the NRECA or anyone else, or if its administration is to continue to be an elusive business—"now you see it and now you don't." In short, the editorial ended, REA needs as never before "a wise friend's firm hand; Harry Slattery's."

Incidentally, the Senate Agriculture and Forestry Committee on November 10th decided to ask for $2,500 for a preliminary investigation of REA, instead of $15,000 originally asked by the special subcommittee.

SEC Issues Statistical Report

A THIRD report on financial statistics of operating gas and electric subsidiaries registered under the Holding Company Act was released on November 1st by the Securities and Exchange Commission. It is the work of C. A. Turner of the SEC Public Utilities Division and covers thirteen years' study of all such operating companies having assets of $5,000,000 or more. High lights of the report are as follows:

The effect of mounting corporate taxes is indicated by the average percentage of taxes to operating income of 21.3 per cent in 1942 as against 12.55 per cent in 1937—representing an unbroken six years' climb. Despite increasing taxes and other expenses, average common stock return has gone down only slightly in the last three years.

It was 9.55 per cent in 1942 as compared with 9.78 per cent in 1941, 10.14 per cent in 1940, 9.57 per cent in 1939, 8.32 per cent in 1938, and 7.07 per cent in 1937. The average percentage of depreciation reserve to property shows a steady increase from 9.18 per cent in 1937 to 14.9 per cent in 1942.

The volume itself contains no summary. It consists of an individual analysis for each company examined—representing about 75 per cent of the assets of all registered companies.

The average funded debt interest rate was whittled down each year. In 1937 it was 4.57 per cent, in 1938 4.40 per cent, in 1939 4.23 per cent, in 1940 4.13 per cent, in 1941 4 per cent, and in 1942 3.96 per cent.

The report can be obtained by interested persons by addressing requests to the SEC Public Utilities Division in Philadelphia, asking for "Financial Statistics for Electric & Gas Subsidiaries of Registered Public Utility Holding Companies, 1930-1942."

REPORT of Public Utilities Division, Securities and Exchange Commission, Philadelphia, Pa. Copies available on request. 408 pages.

Army Helps Out in Utility-fuel Conservation Program

IN concert with the utility conservation program the Army is out to extract the last thermal unit from every lump of coal delivered to its bins. As a campaign to stamp out waste and abuse of equipment and supplies, every soldier who handles a coal shovel is being taught exactly how anthracite and bituminous should be fired.

The Army's yearly consumption of coal, based on the current rate of use, amounts to 9,000,000 tons of bituminous and 1,000,000 tons of anthracite.

The campaign being conducted by the Army to conserve fuel in its far-flung structures is an important contribution to the over-all program sponsored by various war agencies to eliminate waste of coal, oil, transportation, man power, and critical materials, so that as much as possible can be used directly to speed the war effort. The electric power and manufactured gas industries have been called upon to effect savings wherever possible because of the large amounts of coal and oil consumed, as well as man power and critical materials, in the manufacture of these utility products. Also contributing to the conservation movement to save man power and critical materials are the communications and natural gas industries.

THE Army intends to see that every soldier-stoker is trained to maintain and operate heating equipment in a way that will hold to a minimum the number of burned grates, cracked fire

"I SEE THE MAN-POWER SHORTAGE HAS STRUCK THE DISTRIBUTION DEPARTMENT"

pots, and similar instances of preventable abuse.

The Engineer Corps has the responsibility for proper and economical heating of Army barracks, hospitals, warehouses, and other installations. In the corps are officers who have devoted years to the study of fuels. Since Pearl Harbor, they have been reinforced by top-flight executives from some of the nation's leading utilities. The Engineer Corps has plenty of accurate information on the right and wrong ways of firing boilers.

To make sure the soldier-stoker remembers what he has been trained to do, the corps is producing a series of colorful posters, and arranging to mount one securely beside every heating installation under its control. The posters show, for both bituminous and anthracite, the proper placing of kindling for starting fires, the correct depths of fresh coal, hot coal and ash, and the principles of damper control. So complete and detailed are these posters that even G. I.'s with the very low I. Q.'s can hardly waste coal.

THE Engineer Corps looks upon the firing of heating units as a subject for technical instruction. Consequently, they turned the instructional material over to maintenance division, headquarters, Army Service Forces, to be whipped into form with professional fin-

ish. One of the missions of the maintenance division is to help the technical services, of which the office of the Chief Engineer is one, in formulating educational campaigns to soldiers on matters requiring a technical approach. So that it may carry out this mission effectively, maintenance division includes in its education section several men who before the war were account executives, copy writers, or art directors for leading advertising agencies.

It may be noted that the Engineer Corps does not hold the amateur notion that one poster can make a whole campaign, or that projects as important as the saving of coal can be accomplished with a single effort. From time to time throughout the winter, our soldier-stoker will find new, different posters within his range of vision, repeating the same important instructions but presenting them in a fresh form so he will study them again.

Air Lines Promise Great Things For the Future

AIR transportation in the postwar period—local, national, and international—undoubtedly will overshadow the development of any industry in history. Two recent discussions on the subject indicate the tremendous gains that have already been made during the war to establish a groundwork upon which vast expansion can be made.

Roger W. Babson is enthusiastic about the prospects of the future and notes that the industry is endowed with a minimum of the problems inherent in all other forms of transportation. He points out that as a result of the war hundreds of thousands of men and women have been introduced to air transport. "Their enthusiasm for this entire industry—still in its childhood—forecasts an expansion which will make the past age of railroading look sick."

In a recent issue of the weekly letter, *P.U.R. Executive Information Service,* some interesting points are brought up with respect to the prospects for local air transportation development. The result of decisions soon to be made by regulatory authorities in Washington, says the service, may have far-reaching consequences on the organization and physical setup of common carrier systems of the future, including urban, suburban, and interurban.

The Civil Aeronautics Board, the service continues, indicates that a scramble is now on to secure operating rights for airplane and helicopter routes, which, if granted, would seriously affect established railroads and local transit companies. Some of the applications have been filed by local transit companies themselves. More are expected.

MR. BABSON expresses the opinion that the position of air transport companies is stronger than those of the companies which manufacture airplanes. The basic reason for this, he says, is that the air transport companies are primarily distributors and merchandisers of a highly efficient and convenient form of transportation. They have no problems concerning fixed charges, production contracts, or labor, and they will carry passengers and freight regardless of the ups and downs of the airplane manufacturing companies. He continues:

> Of course, work will not stop abruptly at the end of the war in the case of the manufacturing companies. Larger and tougher bombing planes and faster pursuit and fighter planes will continue to be built. There will also be some reconverting work in changing over present bombers to freight and passenger planes.
>
> There has not yet been any cancellation of plane contracts such as we have seen in the machine tool industry. But these are bound to come ultimately, although an attempt will be made to employ as many people in the manufacturing companies as possible. Taxes are also a much greater handicap to these concerns than to the air transport companies. On the other hand, the low market price of these manufacturing company

stocks may have discounted much of this grief.

Mr. Babson takes cognizance of the fact that passenger demands on commercial air lines greatly exceed present capacity, and says that if it were not for lack of equipment passenger air mileage would now be at least double that of a year ago. He says when the war ends, he expects planes still booked to capacity, even though more equipment will then be available. He states:

> The air lines have, perhaps, the most progressive managements of any industry. They are learning much from war-time transportation problems. Incidentally, they are contributing much to the successful conduct of the war. Of the future position in world transport of our air lines, there can be no doubt. This is witnessed by the inauguration of daily transcontinental all-cargo flights, and by the applications on file for transatlantic routes.
>
> In exchange for "lend lease" and other Allied aid we may ultimately secure permanent air bases in the West Indies, the Pacific, and elsewhere. Ostensibly these will be for our defense, but actually they will be used for commercial purposes on a rental basis by our air lines.

Mr. Babson contrasts the great cost of providing "roadbeds" for every other form of transportation with the lack of such expensive outlays in the aviation industry.

Airports and terminals, aside from equipment, he says, are the only "use" expense to which air lines are put. Usually they bear only a portion of this cost and undoubtedly after the war will secure the use of many fields and terminal facilities without much expense involved.

THE *P.U.R. Executive Information Service* notes some typical examples of plans to handle local passenger traffic by air. They are:

> White Circle Line, Inc., has filed an application with CAB for permits to transport passengers, mail, and property by helicopter between points in Massachusetts and Connecticut. Capital Transit Company, of the District of Columbia, has indicated its intention to file for helicopter "feeder" routes in the vicinity of the nation's capital. Braniff Airways, Inc., has recommended to CAB the development of feeder line and pick-up air service on a trade area basis. Under the Braniff plan small aircraft based at the airports of main cities through which trunk air lines now operate would travel to towns and villages throughout the normal trade territories of those cities and return to base at night.

The impact of such local air traffic would be tremendous, the service predicts, adding that CAB is already considering joint conferences with the Interstate Commerce Commission in an effort to visualize the effect on urban railway service, so that intelligent policy lines and limitations can be drawn.

Such matters as automotive development, highway maintenance, gasoline taxes, and even real estate development are in the picture. In the international field, CAB reports that nearly twice as many air carriers want to fly the stars and stripes to foreign lands as now carry it over continental United States. Colonel Edward S. Evans, noted air traffic economist, last month predicted in Detroit that thousands of aerial freight trains, transport planes, and glider trains would be carrying freight at a cost of 2 cents or 3 cents a ton mile in the postwar era.

¶ "YOUR *business-managed [electric] companies gave birth to the idea [of rural electrification] during the Spanish-American War, forty-five years ago. You developed it to a brilliant record of 1,500,000 farms ready for this war. Yet you let government people come along just several years ago and steal the rural electrification show from you, and they took your money and mine to do it with. Who gets the credit and the publicity today for rural electrification? Your companies who started it? No. REA with a good catch name and ballyhoo . . .*

—ASHTON B. COLLINS,
Writing in the Edison Electric Institute Bulletin.

The March of Events

Solons Initiate Probe

REPRESENTATIVE Joseph J. Mansfield, of Columbia, Texas, recently introduced in the House of Representatives a resolution directing the Federal Power Commission to inquire into and to make a report to the Congress with respect to natural gas, including the available reserves, the rate of depletion, present and prospective utilization, and the economic waste and undesirable competition with a displacement of other fuels.

A similar resolution was introduced in the Senate by Senator John H. Overton, Democrat of Louisiana.

The resolutions are directed primarily toward a complete investigation of the results that can be reasonably expected from the construction and operation of the proposed 20-inch natural gas pipe line from a point near Corpus Christi, Texas, to the Appalachian industrial area of West Virginia and adjoining states.

Less Holiday Lighting

ORNAMENTAL lighting of Christmas trees in the coming holidays should be confined to trees inside private homes, J. A. Krug, vice chairman of the War Production Board and director of the agency's Office of War Utilities, said early this month.

"Government and industry have combined in a nation-wide conservation campaign to save critical fuels and materials necessary to produce and consume electricity," he said. "I am asking the American people to refrain from the Christmas lighting custom as a part of that campaign. Electric light bulbs are particularly short at present and strict conservation of them is necessary. Widespread consumption of bulbs during the Christmas season merely will mean a greater scarcity later on."

Impounded Cash Stirs Controversy

A NEW point of controversy developed recently in the Cities Service Gas Company's appeal from a Federal Power Commission order reducing gas rates by $4,445,000, based on 1941 revenues.

The company asked the United States Circuit Court to extend the time for putting the order into effect until the appeal is decided and to impound the funds accruing after September 1, 1943, the original effective date of the reduction.

Counsel for the FPC, the Kansas Corporation Commission, the Missouri Public Service Commission, and the city of Kansas City said they had no objection to the stay, but insisted the court's order should contain some "protection for the ultimate consumer."

They suggested this could be achieved by including assurance that when the case is decided, the impounded money should go either to ultimate consumers, or be returned to the gas company.

Reserving judgment on that point, Circuit Judge Orie L. Phillips said, "we're not going to decide today who's going to get this money. We will hold this money and decide its method of distribution at the proper time."

Jerome Joffee, assistant city attorney for Kansas City, said the "ultimate consumer" phrase should be included in the court's order because subsidiary distributing companies were claiming the money.

Bias Order Stands

PRESIDENT Roosevelt on November 6th directed that all contracts with the government must contain antirace discrimination clauses, thus overruling an opinion by Controller General Lindsay C. Warren that the requirement was "directive" rather than "mandatory."

In a letter to Attorney General Francis Biddle, the President said he realized the hesitancy of the Controller General to withhold payments on government contracts in which these provisions have not been included where there is doubt as to whether the order is mandatory.

The President added that he wished to make it perfectly clear "that these provisions are mandatory and should be incorporated in all government contracts. The order should be so construed by all government contracting agencies."

Charging that the Controller General's interpretation nullified the President's efforts to recruit all available man power, the Greater New York CIO Council recently called upon the President, in a telegram, to issue a statement interpreting his Executive Order 9346 as mandatory in all war contracts and subcontracts.

Mr. Warren had held, in an opinion forwarded by him on October 27th to James F. Byrnes, director of the Office of War Mobilization, that the order was "directory" rather than "mandatory" and could be disregarded where the United States could not obtain vital goods or services if the government insisted on inclusion of the antidiscrimination clause in the contract.

Although the Warren opinion cited "serious administrative difficulties" caused by the refusal of the Southwestern Bell Telephone Company to accept a Federal contract for telephone service to national war agencies in Kansas City if the antidiscrimination clause remained in the contract, Joseph Curran, president of the CIO council, declared that the ruling, in effect, served notice on all employers that they need not be bound by the antidiscrimination order in applying for government contracts.

"This attempt to weaken your antidiscrimination policy," said the telegram to the President, in part, "will gravely hinder production by eliminating employment of loyal, competent Negro, Jewish, foreign-born workers. Inevitable result of this decision aids Hitler propaganda campaign and weakens American morale. Strongly urge you issue statement interpreting 9346 as mandatory in all war contracts and subcontracts."

Southwestern Bell has since announced the signing of a contract containing an antidiscrimination clause.

Credit Unit Formed

THE General Electric Credit Corporation has been organized as a financing subsidiary of the General Electric Company under the banking law of New York state, and will broaden the scope of activities carried on since 1933 by General Electric Contracts Corporation, whose business will be assumed by the new concern.

Whereas the contracts company engaged principally in financing the sale of consumer goods, the new company will have an almost unlimited scope in the field of credit. Its immediate function will be to provide financing for war construction and production work in connection with contracts which involve use of products manufactured by General Electric and affiliates, and of parts produced by others for incorporation in such products.

Management of the new company will be the same as that of the contracts company, of which George F. Mosher is president, and the main office will be in New York city.

Many of the smaller subcontractors of General Electric need more capital to handle war contracts and find some difficulty in obtaining credit, Mr. Mosher said. The new company will have the advantage of General Electric's intimate knowledge of the type of war work involved in the contracts and its close connections with many of the contractors.

After the war the new company not only will provide financing for the purchase of consumer goods, but also will furnish increasing credit facilities to purchasers of other products made by General Electric Company.

Rule on Gas Price Delayed

THE Office of Price Administration last month deferred action on a request for an increase in the price of gas taken from Texas county, Oklahoma, in the Hugoton gas field of Kansas and Oklahoma.

Representative Rizley, Republican of Oklahoma, asked for a minimum of 4 cents a thousand cubic feet, saying that gas taken from the Oklahoma part of the field now sells for only 2 cents compared with 4 to 5 cents on the Kansas side.

Rizley said OPA officials would not make a decision until they received some information from the Oklahoma Corporation Commission. Senator Thomas, Democrat of Oklahoma, and representatives of the General Atlas Carbon Company and the Cabot Carbon Company, with plants at Guymon, Oklahoma, and principal users of the gas, also attended the hearing held in Washington on October 26th.

Standards for Abandoning Rail Lines

A NATIONAL policy forbidding abandonment of railroad lines unless "the efficiency of the national transportation system will be increased thereby" was called for in a bill introduced by Senator Reed, Republican of Kansas.

In a statement, the Senator charged that the Interstate Commerce Commission "has apparently fallen into the habit of deciding branch line abandonment cases with an adding machine" and without giving proper analysis to revenue and expense figures submitted in connection with abandonment applications.

His measure would set up standards to be used in determining whether a line should cease to operate. These standards include a requirement that the commission find the line is being operated economically, that all reasonable efforts have been made to increase revenues, and that the carrier's revenues may not be improved by increased business.

Agree to Rate Rise Halt

THE railroads on October 30th agreed to a further suspension of the 6 per cent increase in freight rates which was ordered by the Interstate Commerce Commission last April but suspended on May 15th until the end of the year. They suggested that this further suspension should be only for six months.

They said they did this "because of the peculiar uncertainties now facing them with

respect both to cost of operation and volume of traffic in the immediate future," one of the uncertainties referred to doubtless being the possibility of a strike by their employees.

Fred M. Vinson, Director of Economic Stabilization; Marvin Jones, War Food Administrator; and Chester Bowles, Price Administrator, however, requested that the freight increase be suspended indefinitely. They said that "so favorable is the present situation that there seems to be no good reason for further short-term suspensions, particularly because the commission may at any any time reopen the matter for further consideration if necessary."

Sugar Industry Regulated

THE Central San Francisco Company last month was placed under a Puerto Rican Public Service Commission order fixing the profit allowable to the company at 7 per cent and boosting crop participation of "colonos" (growers) from about 63 per cent to 70.68 per cent in its first permanent regulation of the Puerto Rican sugar industry. The commission also allowed the growers 50 per cent of the molasses produced and 50 per cent of the cane by-products which might be sold.

Commission Chairman Benjamin Ortiz said the action taken superseded provisions of the 1942 law declaring the Puerto Rican sugar industry a public utiltiy. Since the 1942 ruling the companies have been operating under provisional regulations maintaining the status quo until investigations could be completed.

Mr. Ortiz said the commission settled on the evaluation of Central San Francisco property by a formula striking the intermediary point between the original cost and the replacement cost. The procedure used in this case would be followed for other companies, he said.

Use of Oil Ordered

CRITICAL shortages of natural gas for industrial use in the Appalachian area on November 1st caused the Office of War Utilities to order industrial consumers with standby facilities for burning residual fuel oil not to use natural gas between November 15th and March 31st.

J. A. Krug, OWU director, said industries in the area faced shortages of gas in the winter estimated at 12,000,000,000 to 18,000,000,000 cubic feet. He added that enforced use of residual fuel oil by all plants having alternate facilities would save an estimated 10,000,000,000 cubic feet.

Mr. Krug reported that the war industries in the area, which are responsible for 28 per cent of the nation's war production, had increased their use of natural gas one-third since the start of the war. Present supplies are obtained from the Oriskany field in West Virginia and by diversion from the Panhandle Eastern pipe line running from Amarillo, Texas, to Detroit, Michigan.

The OWU has issued certificates for materials to the Tennessee Gas & Transmission Company for a pipe line from Corpus Christi, Texas, to West Virginia, which will be completed to bring 200,000,000 cubic feet of gas daily into the Appalachian area by the winter of 1944-45.

The area affected by the order requiring the switch to residual fuel oil includes the states of Ohio, Pennsylvania, Maryland, New York, Virginia, West Virginia, the District of Columbia, and 30 counties of Kentucky.

Government Program for Electric Irons

A GOVERNMENT program to start producing electric irons has been drawn up and was recently reported awaiting the go-ahead signal.

Surveys by the Office of Civilian Requirements were said to show American housewives consider electric irons one of the war-short items they need most. Manufacture of them was stopped after Pearl Harbor because some materials which went into them were critically short.

The program prepared by OCR, part of the War Production Board, requires approval by the WPB Requirements Committee before manufacture can start.

The irons would not appear in the nation's stores before the second quarter of 1944. Estimated need for them is 6,600,000. Only about one-third that number will be made if the program is carried out in full.

To help make up the gap between the number of irons needed and the number planned there will be a vigorous campaign for the rehabilitation of burnt-out irons now idle in American homes. Nine out of ten burnt-out irons, it was estimated at OCR, can be rehabilitated.

There will be no rationing as such.

Arizona

Utility Plan Rejected

TUCSON voters recently rejected a proposal for the city to purchase properties of the Tucson Gas, Electric Light & Power Company. The balloting resulted in 1,387 votes for the purchase and 1,655 against it.

A second question, issuance of $8,500,000 in revenue bonds to finance purchase of the utility, was defeated.

Arkansas

Utility Action Postponed

POSTPONEMENT of further action toward acquiring the Arkansas Utilities Company properties because of the inopportune condition was asked by a "citizens committee" appearing before the Helena city council on November 4th. The group also favored the proposed leasing of gas and electric properties by the Arkansas Power & Light Company. Both resolutions were received and filed by the council.

One of the resolutions asked that pending litigation designed to determine whether the city may issue revenue bonds to buy electric utilities be dismissed. A second resolution asked that Chancellor A. L. Hutchins continue the case now pending in his court until the first resolution is acted on.

Provision for the city attorney to file a response to the petition of Gus B. Walton of Little Rock before the Arkansas utilities commission to issue approximately $1,725,000 in bonds on the property to retire existing bonds was included in a third resolution.

A fourth resolution would authorize the city atorney to file a response to the petition of the Arkansas Power & Light Company asking permission to lease the electric properties at Helena and to protest to the commission any order considered prejudicial to the city's acquisition of the properties at a future date. Council adopted a motion by Alderman D. T. Hargraves, Jr., to ask the state commission to postpone hearings on the two petitions until the city council has had time to act on the resolutions. Action was expected at the meeting scheduled for November 18th.

California

Transit Hearing Ends in Impasse

THE final hearing on the Office of Defense Transportation's plan for relieving San Francisco's streetcar problem ended recently in an impasse. Whether the plan, with minor changes, would be forcibly applied was said to rest with ODT Director Eastman at Washington.

Following bitter condemnation of the proposal for reshuffling routes and consolidating duplicated lines by San Francisco labor leaders, Edward A. Roberts, assistant director of ODT, who presided at the hearings, declared that "the basic principles of this plan remain the same after these discussions." Roberts said he was returning to Washington via Los Angeles where he would look into the streetcar situation there.

John F. Shelly, president of the San Francisco Labor Council, accused the ODT of favoring the Market Street Railway in the proposals, and asserted the plan not only does not help the traffic situation but actually makes it worse by depriving important areas of adequate transportation.

Mayor Rossi issued a statement taking the ODT to task for "refusal even to consider the sound and obvious solution to the problem as proposed by the public utilities commission and recommended by me," and said he would join in demanding a congressional investigation of ODT.

Act to Rescind Suit

PROMISED officially and publicly that there would be a complete end to the fumes nuisance by early December, and that in the meantime care would be taken to discomfort residents as little as possible, the Los Angeles city council on October 27th voted unanimously to rescind injunction proceedings against the Aliso street butadiene plant operated by the Southern California Gas Company.

The promise that the plant, source of noxious gas fumes which have inundated the city and neighboring communities for weeks, would be brought under control, was reiterated before the city council by Colonel Bradley Dewey, Federal rubber director, who flew to Los Angeles from Washington.

Repeating assurances given previously to civic leaders, councilmen, and other city officials, Colonel Dewey said the highest priorities had been given for the construction of machinery to completely eliminate the fumes.

One-man Car Operation Defeated

A PROPOSAL for one-man car operation in San Francisco, sponsored by the Market Street Railway, was defeated 159,306 to 32,945 in an election early this month. The company had sought reversal of a city ordinance as a means of easing the man-power shortage.

Strike Danger Removed

THREAT of a new strike on the Pacific Electric Railway in Los Angeles was dispelled on October 26th when officials of the company and the Brotherhood of Railroad Trainmen asked and received permission to place in force overtime payments which will result in the men receiving an average increase in wages of 13.31 cents an hour.

In a joint statement issued by the two groups, it was said the arrangement for the payment of the equivalent of the 13 cents granted last March by the original emergency board was an "acceptable settlement of our case." New agreements provide for time and a half commencing after the eighth hour on duty instead of the present overtime rule which provides for time and a half after the ninth hour worked. Present assignments calling for actual work of less than nine hours would be rewritten to provide for a minimum of nine hours' work to the greatest extent possible.

Colorado

Line Sale Hearing Opened

THE state public utilities commission last month opened a hearing on an application of the Eagle River Electric Company to sell its distribution lines, generation system, and franchise for service in the town of Eagle to the Holy Cross Electric Association, Inc.

The sale price was placed at $58,000.

The company supplies power for points in Eagle and Garfield counties, and transfer would involve the question of whether the purchasing firm, a Rural Electrification Administration organization, would be classified by state law as a public service company and subject to jurisdiction of the commission.

Illinois

New Firm Name Approved

THE Illinois Iowa Power Company announced early this month that the stockholders had authorized the company to change its name to the Illinois Power Company and to issue new mortgage bonds to reduce its bonded debt about $18,000,000.

Michigan

Gas Rate Cut Ordered

AN ordinance reducing domestic and space-heating natural gas rates charged by the Consumers Power Company 20 per cent, effective December 1st, was adopted last month by the city commission. The commission indicated its intention to effect similar cuts in commercial and industrial gas rates.

The action was based on recommendations following a recent survey of the company's rates. Company officials offered no comment, but previously had indicated that they would fight any rate reduction in court.

Nebraska

Willing to Cut Gas Rates

AFTER several conferences with L. R. King, president of Iowa-Nebraska Light & Power Company, and other gas officials, Arthur J. Weaver, Jr., chairman of the Lincoln council's special "probe" committee and acting mayor in the absence from the city of Mayor Marti, last month reported to the council a willingness, given with some reluctance, to reduce local gas rates $35,000 per year. This would represent approximately 2½ per cent if industrial and domestic consumers are placed in the same category.

Weaver said that in his opinion "this is not enough," and that he would ask gas company officials to again confer with the committee. This further conference was for the purpose of continuing negotiations.

The company's gross annual revenue from gas distributed in Lincoln was reckoned at approximately $1,500,000.

Union Joins Debate

LOCAL B-763 of the International Brotherhood of Electrical Workers Union recently joined in the district court suits which seek to block acquisition of the Nebraska Power Company by the Omaha Peoples Power Commission.

The union is made up of electrical workers and helpers at the privately owned utility company. David Weinberg, attorney for the union, filed a petition of intervention in the suit brought October 6th by Martin W. Nelson, president of the union, and Edward A. Hofmann, president, employees association.

New Hampshire

Pleads for Holdings Sale

ALBERT A. CREE, of Rutland, Vermont, president of Twin State Gas & Electric Company, testified before the New Hampshire Public Service Commission recently that unless his utility can sell its $8,000,000 holdings it will be "forced into bankruptcy."

This evidence was submitted at the opening session of a hearing in Concord on a petition of Twin State for the right to sell half its holdings, constituting its properties in New Hampshire, to Public Service Company of New Hampshire for $4,000,000.

Twin State, the president said, can no longer continue to operate without heading for financial troubles because of heavy interest rates on loans made some years ago.

Mr. Cree also is president of Central Vermont Power Service Corporation, which proposes to take over the other half of Twin State properties, all located in Vermont.

Twin State serves 3 cities and 27 towns in New Hampshire.

New Jersey

Further Rate Cut Sought

THE Public Service Electric & Gas Company, which serves virtually all of New Jersey, was recently ordered by the state board of public utility commissioners to show cause at a hearing on January 20th in Newark why its commercial lighting and power service charge should not be further revised.

Voluntary reductions amounting to about $45,000 are contained in a schedule to be made effective by the company December 1st. The principal beneficiaries would be Fort Dix and Camp Kilmer. The board seeks another revision "to equalize more completely the charges to lighting and power customers."

The board order, which alleges present rates for electric service available to small commercial customers whose use is of the "high load factor type" appeared to be out of line with both the cost and the value of service, calls for the company to file a statement of position on or before December 15th. The hearing has been called to determine whether existing rates are discriminatory and the present classifications unreasonable.

Thomas N. McCarter, chairman of the board of Public Service Electric & Gas, on November 8th said the company would contest efforts of the Federal Power Commission and the state commission to make extensive reductions in its book value. The FPC had called upon the company to show cause in thirty days why it should not cut $67,893,724 out of the cost structure of its electric department. The utilities commission in a coöperative order called for a reduction of $52,433,726 in the book value, some of which had already been conceded.

"The company insists that its books today clearly represent the actual cost to it of its various properties and that the value of such properties is largely in excess of the book costs, and so far as the electric property is concerned has been so determined to be by public utilities commission," Mr. McCarter said. "However, in order that the business of the company may normally proceed without interruption of dividends, the company is preparing to set up a capital surplus fund of a substantial amount against which such items, if any, as hereafter determined can be charged. This fund will provide a vehicle for contesting each and every item that may be ordered written off.

"The properties of this company cannot be confiscated by the Federal Power Commission short of a decision of the Supreme Court of the United States, nor by the public utilities commission short of a decision of the court of errors and appeals of this state, and perhaps the Supreme Court of the United States. We recognize this as a serious matter, but we are prepared to protect the rights of the stockholders so far as it lies within our power to do so.

"The electric department of this company has had a kilowatt hour increase since Pearl Harbor of 39.14 per cent, largely, if not altogether, due to war work. It has performed its work well, and it has not failed the country in this great crisis. The same is true of the gas department. Now we will have to divert our energies to the extent required by the preparations for the hearings and the hearings themselves that will take place and the litigation that will be involved in this matter."

New York

Association Not a Union

JUSTICE William H. Murray, of the state supreme court, ruled at Albany on November 5th that the Railway Mail Association, nation-wide organization of railway postal clerks, though an affiliate of the American Federation of Labor, was not legally a labor

organization, but "a fraternal beneficiary society," and did not come under New York state's statutory prohibition against discrimination as to membership because of race, color, or creed.

The ruling was in an action for a declaratory judgment to bar the state from proceeding against the association under the antidiscrimination laws. The parent body began the court action when its New York city branch voted to admit Negroes to membership despite a ban in the association's constitution. It was announced at the office of Attorney General Nathaniel L. Goldstein that an appeal would be taken to the higher courts to upset Justice Murray's decision.

Justice Murray held that when the state through its insurance department authorized the association to transact insurance business, "it determined then and there" that it was "a beneficial insurance society and not a labor organization." Pointing out that a labor organization enjoys the right of collective bargaining and that the Railway Mail Association's membership consists exclusively of civil service employees of the government, Justice Murray wrote that "to tolerate or recognize any combination of civil service employees of the government as a labor organization or union is not only incompatible with the spirit of democracy, but inconsistent with every principle upon which our government is founded."

He held that the association was not a labor organization within the terms of its charter, and that it does not exist for the purpose of collective bargaining.

Rise in Gas Rate Sought

A PUBLIC hearing into an application by the Brooklyn Borough Gas Company for a 5 per cent increase in rates was opened on October 30th by the state public service commission at New York city. Representatives of the city and Office of Price Administration strongly opposed the rise.

Colley Williams, counsel for the company, argued that the requested new rates would provide substantially less revenue than the company was legally entitled to earn. Since 1939, he said, operating revenue has declined from $707,200 to $485,433 in 1942, and net income from $377,804 in 1939 to $190,024 in 1942.

Assistant City Corporation Counsel Harry Hertzoff contended the company was serving consumers "whose incomes have not increased," since "this city is not a boom town." The company is now getting the highest gas rate in Brooklyn, he said.

Drive to Reduce Water Waste

A LITTLE care in New York city's kitchens and bathrooms can save 100,000,000 gallons of water daily and conserve fuel and vital equipment, Patrick Quilty, commissioner of water supply, gas, and electricity, said recently in announcing a drive against water waste being waged by his department.

A 6-month departmental survey indicated, he said, that more than 11 per cent of the 900,000,000 gallons of water supplied daily is wasted through faulty plumbing fixtures and carelessness.

"Most people do not realize," he said, "that vital war materials, such as coal, oil, and chemicals, are required to distribute water to the consumer. By reducing the daily consumption of water not only would an adequate water supply be available for emergency use but most of the city's pumping stations could be shut down for the duration."

Rural Line Extension

HERMAN RUSSELL, president of the Rochester Gas & Electric Corporation, announced recently that the utility had appropriated $400,000 for extension of rural electric lines to be undertaken mainly in Steuben and Allegheny counties. "We have had materials approved by the War Production Board," Mr. Russell said, "and it is simply a case of getting the work done."

Oklahoma

Kerr Dam Plan Studied

THE power division of the Interior Department was reported recently to be considering favorably Governor Kerr's proposals for improving conditions surrounding control of Pensacola dam, but there was little likelihood its control would be returned to the state before the war is over, it was learned.

Officials of the division indicated they were at least willing to give the governor's proposals careful study and the prospect was that at least some of his requests would be worked out. They said this was unlikely to happen any time soon, because a great amount of work is necessary before commitments can be made.

Some observers in Washington, it was reported, feel the government will continue in control of the dam even after the war, since it has set up the Southwest power pool for Pensacola, Norfolk, and Denison dams. The executive order taking control of the dam provides for turning it back after the war, officials said, but there is a strong prospect that this will not be done.

Division officials do not appear unfavorable to Kerr's suggestion that income be applied to

interest payments and were said to be inclined to believe this would be granted. Their position was much the same on the question of paying rent for the dam now, although the Federal Power Commission has not yet set the rental.

Pennsylvania

Outlines Postwar Program

A "BROAD, forward-looking program" carefully blueprinted and resting on the shelf, ready to put into effect on short notice, is Philadelphia Electric Company's contribution to the current activity by industry in the field of postwar planning.

H. B. Bryans, executive vice president, in a recent summary revealed what the utility is doing to meet the situation that will develop when the Axis finally is beaten and the American way of life returns to its normal tempo.

"The expanded work we plan to do," said Bryans, "will require all of our present personnel, the services of our furloughed employees, and many additional workers. There will be more than enough work for every member of our organization after the war regardless of the ups or downs of industry elsewhere."

Included in the company's planning is the revival of activities always considered a part of standard service which have had to be passed up for the duration because of material and man-power shortages.

South Carolina

End of Fight Seen

THE South Carolina Public Service Authority probably will drop, in the coming session of the state general assembly, its 2-year-old fight for permission to purchase the Lexington Water Power Company, and the South Carolina Electric & Gas Company.

The bill which loomed as a major controversial measure at the last session, but which never reached the stage of an open fight on the floor, still stands high on the senate calendar.

Recent indications in Columbia, however, were that the original proponents of the measure probably would not continue their fight for it, and that the bill probably would die.

Tennessee

Refunding Bonds Sold

A SAVING of more than $400,000 in interest on indebtedness of the Nashville Power Board during the next fifteen years was predicted recently as the city of Nashville sold $4,790,000 worth of electric revenue refunding bonds to a syndicate of 16 investment bankers at an interest rate of 1.4 per cent with a premium of $8,617.21.

The buyers, headed by Goldman, Sachs & Company of New York city, and submitting their bid through W. N. Estes & Company, Inc., of Nashville, offered a net interest rate of 1.386 per cent on the bonds, including the premium, which will mature 1955 through 1959.

W. C. Baird, chairman of the power board, pointed out that the refunding issue would save the difference between 2½ per cent interest which has been paid on the original electric bonds and the 1.4 per cent charge provided in the recent bid.

Texas

Rate Cut Won in Franchise

RATE reductions of $685,400 in 1943, retroactive to January 1st, by the Dallas Power & Light Company and a new indeterminate service-at-cost franchise were accepted by the city council and the power company last month as the climax of new negotiations.

The council passed a revised franchise on first reading October 27th, 7 to 0, Mayor Woodall Rodgers being out of the city and Councilman W. B. Johnson not in the council chamber when the vote was taken. A previously agreed-to ordinance that had been given two readings was laid aside in favor of the freshly drafted measure.

If the franchise is finally passed within the 30-day period and a petition for an election on approval of the document is filed in due course, voters will pass on it December 28th. The council will canvass the results December 29th, speeding up this process in order that

the franchise may become effective by the end of the year.

Unless the legal machinery works smoothly, working to put the rate reduction in effect by the end of 1943, the company will not be able to save its Federal excess profits tax. A good part of this money the company would use to pay this 1943 tax will be used instead for the rate reduction.

As a result of a day of renegotiation, following the deadlock, the city obtained a reduction of $33,000 for small residential consumers more than that previously agreed to by the company, and a $10,100 further cut in the city's street-lighting bill.

Hearing on LCRA Set

THE state supreme court on November 4th set for hearing on January 5, 1944, an attempt to determine which of two district courts has jurisdiction in the dispute between the city of San Antonio and the Lower Colorado River Authority over operation of the Comal power plant at New Braunfels.

The court granted the city's request for leave to file a petition for mandamus to bring the case from the court of District Judge M. C. Jeffery of Comal county.

The Comal power plant belonged to the San Antonio Public Service Company, which the city purchased, then leased to the Guadalupe-Blanco River Authority. The latter agency assigned its lease to the LCRA.

Trustees of the city electric system attempted to have the lease declared invalid by a court, but its suit was denied on the ground that the trustees were without authority to question the transaction. The city then obtained an injunction from District Judge John Onion, of San Antonio. Judge Jeffery in turn enjoined the city from prosecuting its suit.

To remove the conflict in jurisdiction, the state supreme court agreed to consider the mandamus request, unless the question of jurisdiction is decided amicably before January 5th.

Pipe Line Stimulates Tax Talk

WHEN and if a special session of the state legislature is called, the subject of natural gas taxes will be considered, Governor Coke Stevenson commented recently in reply to a question about a proposed 1,200-mile pipe line to transport Texas gas to West Virginia.

"It will be included when we do have a session," said Stevenson, who opposes efforts to remove from Texas any gas which will be needed to supply present and prospective industries of the state.

The governor declared that applicants for the line, the Tennessee Gas & Transmission, are fully aware of the risks involved in planning to export large quantities of natural gas from Texas. Stevenson said that Harold L. Ickes, Petroleum Administrator for War, and Frank Walker, Postmaster General, both received his protest that 95 per cent of the people in Texas oppose building the line.

The form of natural gas taxation is a matter of conjecture. The state now levies a tax of 5.2 per cent of the value of natural gas at the well. Some law might be passed, Stevenson said, with a schedule of rising rates based upon the distance the gas is carried, a customer 100 miles away buying gas with a lower tax than one 1,000 miles away.

Utah

Firm Gains Rehearing

THE state public service commission recently agreed to reconsider its action in imposing a $1,000 fine on the Telluride Power Company of Richfield for assertedly refusing to institute the uniform system of accounts and restate its property on original cost.

A new hearing in the case was expected to be arranged for in the near future.

Washington

Customers Get Aid

TO provide "maximum usefulness of its services to customers under war-time conditions and meet the postwar needs and interests of its customers, as changed situations may demand," the Puget Sound Power & Light Company has established an Economic Development and Research Department at its headquarters in Seattle, Frank McLaughlin, Puget Sound Power president, announced last month.

Henry R. Kruse, who has been with the company since immediately after his graduation from the University of Washington as an electrical engineer in 1923, has been appointed head of the new department, McLaughlin said. He was formerly manager of the company's northern division at Bellingham. President McLaughlin said the department was established as an outgrowth of the company's severance September 13th of ties with Engineers Public Service Company and in keeping with the local company's policy "to look into the future as far as possible and plan ahead."

The Latest Utility Rulings

Ban on Political Contributions by Holding Companies Upheld

THE prohibition contained in § 12(h) of the Holding Company Act against political contributions by registered holding companies was sustained by the circuit court of appeals, eighth circuit, in affirming convictions for violation of, and conspiracy to violate, the section. Union Electric Company of Missouri, a registered holding company and the corporate defendant, is engaged in operating electric utilities in Missouri, Illinois, and Iowa. It engages in and controls instrumentalities of interstate commerce and it uses the mails.

A contention that this section of the act is invalid because political contributions are not commerce and are not subject to regulation by Congress was overruled with the statement that the commerce power extends to every activity, intrastate or interstate, which so affects interstate commerce, or the exercise of power over it, as to make regulation of such activity an appropriate means to the attainment of a legitimate end. Congress having decided upon a legitimate end to be attained and the policy adapted to its attainment, the court declared, may choose the means for accomplishment.

It was also argued that political contributions are not evil *per se;* that the section fails to distinguish between trivial and large contributions; and that it is an attempt to regulate state and local elections. The court in reply said that it is axiomatic that an innocent means may be used for an evil purpose. The fact that a contribution may be trivial is not enough to remove the contributor from the scope of Federal regulation when the sum of all such contributions may be far from trivial. The prohibitions, it was held, do not interfere with voting or with control over the state's regulation of elections. As to a contention that political contributions do not affect rates to consumers and, therefore, do not affect interstate commerce, the court said:

> If such contributions are considered as costs of operation, or if they are disguised on the books of the utility company as operating costs, they will affect rates. In this connection it is argued that the evidence shows that contributions and use of the company's money were favorable to the interest of consumers for the reason that by this means bills disadvantageous to the utility were defeated in the Missouri legislature and bills advantageous to its interests were passed, resulting in a saving to the company of approximately two and one-half millions of dollars annually. It is for the Congress, however, and not the courts, to estimate whether the influencing of legislatures by means of contributions to candidates for office is harmful to the public interest, even though admittedly beneficial to an individual or a class.

The point was stressed that courts in passing upon the validity of such a prohibition may not estimate whether the influencing of legislatures by means of contributions to candidates for political office is harmful to the public interest although admittedly beneficial to an individual or class since this is a matter for Congress to decide.

The court also overruled objections that the prohibition was invalid because Congress made no specific findings that contributions made otherwise than by mail or by instrumentalities of interstate commerce have any relation to interstate commerce, and the further objection that the prohibition has no relation to the carriage of the mails but constitutes an attempt to regulate the users of the mails. *Egan v. United States, 137 F(2d) 369.*

Continuance of Inadequate Rates Would Be Confiscatory

AN increase in rates for gas was authorized by the Indiana commission where this would permit the company to earn 5.7 per cent on net investment before the payment of the increase in Federal income taxes imposed since 1940. The company had computed the value of its property on an original cost basis, and from this cost it had deducted depreciation charged on a straight-line basis even though in most years the depreciation had not been earned. The company had eliminated all intangible items. The commission complimented the company upon the manner in which it had prepared its rate case.

Since the company buys all its gas from a parent company, the Kentucky Natural Gas Corporation, the price which it pays was carefully scrutinized. The commission made the following statement:

> The evidence showed, however, that the price paid for gas is 37½ cents per thousand cubic feet except for gas sold to any individual customer in any one month which is in excess of 100,000 cubic feet, and 35 cents for gas in excess of 100,000 cubic feet resold to any individual customer in any one month. The evidence also disclosed that these are the wholesale rates fixed for the Kentucky Natural Gas Corporation by the Federal Power Commission, which is the regulatory body having jurisdiction over the wholesale rates of gas by the Kentucky Natural Gas Corporation.

The evidence disclosed that certain economies in operating expense were enjoyed by the company as a result of the operating expense being allocated by the parent corporation on a time study basis between this company and certain other subsidiaries.

The commission was not unmindful of the inflationary trend and the effort being made to keep down prices in order to prevent an inflationary spiral. Nevertheless, it stated that in view of the fact that the company had already donated a substantial part of its property to the public use because of its inability to earn and set aside a proper depreciation reserve, and because it had never earned a fair rate of return upon its invested capital, it would be confiscatory to require the company to continue to operate under its present rate schedule. *Re Indiana-Kentucky Natural Gas Corp. (No. 15979).*

Water Right Values in Excess of "Original" Cost Ordered Stricken from Accounts

THE New York commission, in the course of an investigation of continuing property records of the Rochester Gas & Electric Corporation, rendered a separate decision on water rights, holding that $4,600,000 for these rights carried on the company's books was in excess of their actual "original" cost to the companies first devoting them to the public interest. Original cost was determined to be $767,828.79, to be charged to Account 101, Electric Plant in Service. The excess, in the opinion of the commission, should be written off to surplus.

The corporation based its claims on allegations that these water rights cost the present corporation $4,600,000, that only a portion of them was devoted to the public use by predecessor companies, and that the amount was ordered placed on its books by the commission.

The commission's witnesses asserted that the proof showed that all these rights, with two possible unimportant exceptions, were devoted to the public use by predecessor companies and that their original cost had been ascertained strictly in accordance with the commission's definition of that term in the sys-

tem of accounts. That definition is "the cost of such property to the person first devoting it to public service." The present corporation is the result of consolidations of earlier companies.

Earlier proceedings relating to this company were considered and the commission reached the conclusion that it had not at any time actually approved the amount carried on the books for water rights.

Commenting on the contention of the corporation that only a small portion, if any, of its water rights was devoted to the public use prior to 1904, it was said:

> The corporation contends, in effect, that the degree of devotion, or the extent to which such water rights were used prior to 1904, should be measured by the amount or percentage of kilowatt hours generated, and perhaps even considering the horsepower installed and the load factors developed, in 1904, as compared with the 1928-1940 development; and further that a percentage representing the portion not devoted in 1904 should be applied to its claimed 1904 cost of $4,464,303 to determine the cost of the rights first devoted to the public use after 1904. . . . According to this theory an installed turbine, if it happened to be used only to 25 per cent of its capacity, would be only 25 per cent devoted to the public use, but no such proposal has ever been made to this commission by this corporation.

The company, said the commission, had not shown that a single right, or any portion of the rights as a whole, was not used to some extent by a public utility at some time prior to June 11, 1904, nor that additional portions had been used for the first time since that date, nor whether it considered them fully devoted to the public use even today. The year 1904 was the date of a consolidation, which, it was pointed out, was merely a change in the character of ownership and resulted in the issue of securities by the new corporation and their exchange for securities of the companies consolidated. This change in corporate entity was not recognized as a valid reason for writing up the dollars of stated original cost. *Re Rochester Gas & Electric Corp. (Case 9552).*

Telephone Interconnection Denied Where Duplication Would Result

ATTEMPTS by the Oklahoma-Arkansas Telephone Company to obtain a physical connection with the Southwestern Bell Telephone Company were again rebuffed when the Federal Communications Commission held that it was not necessary or desirable in the public interest to order a physical connection at Fort Smith, Arkansas, or to establish through routes and charges between Poteau, Oklahoma, and Fort Smith. The commission had previously denied a petition by Oklahoma-Arkansas for restoration of a connection, in Oklahoma-Arkansas Teleph. Co. *v.* Southwestern Bell Teleph. Co. (Fed CC 1939) 27 PUR(NS) 202.

The petitioner, Oklahoma-Arkansas, had urged that existing services between these points were inadequate. The commission said that if this allegation were supported by fact, the most obvious corrective measure would appear to be an increase in existing facilities. The petitioner's toll line facilities consisted of two iron wire circuits, which required rehabilitation. Facilities of Southwestern Bell were found to be adequate to meet the traffic between these points. The commission concluded:

> Taking into consideration the quality of service which petitioner could offer, the critical shortages now extant with respect to materials and labor, and the availability of additional circuits of the respondent, we find that it is not necessary or desirable in the public interest that we order the interconnection requested by petitioner. Our conclusion would not be otherwise even if we were to assume that the petitioner could and would install such copper facilities as would equal the service quality of respondent. In either event, an unnecessary duplication of facilities would result. We do not

believe that we should, particularly at this time, require additional facilities involving expenditure of money, labor, and critical materials to achieve a result which is attainable through an available alternative which does not involve such expenditures.

Commissioner Walker dissented, as he had in the original proceeding. He said that Oklahoma-Arkansas would suffer an irreparable wrong committed by Southwestern Bell, which had severed physical connection between the companies and deprived the petitioner of the use of its toll line and the right to route any of its long-distance business over that line.

Walker termed this "an unwarranted and ruthless taking and destruction of complainant's property." *Oklahoma-Arkansas Telephone Co. v. Southwestern Bell Telephone Co. (P-28, Docket No. 3796).*

Price of Stock for Intercompany Transfer Related to Market Values

An application for approval of the transfer of 15,469 shares of $7 preferred stock of Pennsylvania Power & Light Company to its affiliate, Lehigh Valley Transit Company, for a consideration of $97.50 a share, plus accumulated and unpaid dividends, was approved by the Pennsylvania commission. This transaction is one of several having to do with the simplification of the capital structures of these companies in connection with the dissolution of National Power & Light Company, which controls both of them.

The cash consideration is to be applied by Lehigh towards the retirement of bonds, resulting in simplification of the funded debt. This, the commission said, is obviously desirable.

Sale of the stock to the affiliate was viewed as advantageous to Lehigh because a block of stock of this size could not be sold on the market, within a reasonably short period of time, without materially depressing the market price. Another advantage to Lehigh in selling the stock to the affiliate in connection with proceedings before the Securities and Exchange Commission for dissolution of National Power & Light was averred to be that Lehigh would thus avoid the tax liability which it otherwise would incur through the sale of the stock. This is so because under the present provisions of the Internal Revenue Code Lehigh may sell the stock without incurring tax liability which ordinarily applies to capital gain, provided that the sale is made in obedience to an order of that commission reciting that the sale is necessary or appropriate to effectuate the provisions of § 11(b) of the Holding Company Act.

On the other hand, Pennsylvania Power & Light, by reacquiring the stock, would eliminate large dividends and would reduce the ratio of senior securities to plant account. These the commission considered desirable objectives.

The consideration of $97.50 a share was fixed by an appraiser who had studied the market prices and the stock from 1940 to 1943. Recent quotations were a high of 100 and a low of 97½. The commission took judicial notice of the fact that the closing price of the stock on the Curb exchange on September 30, 1943, was 101½.

The shares had been acquired by Lehigh in exchange for other securities, and the cost to Lehigh was not of record, but 15,469 shares of Pennsylvania Power & Light $7 preferred stock were carried in Lehigh's accounts at a value of $541,727.48.

The total selling price of the stock would be $1,508,227.50.

Commissioner Buchanan filed a dissenting opinion, objecting to the price. He said that the object was to "salvage Lehigh for the Wall Street victims of National at the expense of the consumers of PP&L." The majority had

pointed out that "of course, no part of the consideration will be included in PP&L's rate base." The dissenting commissioner stated that values underlying outstanding securities failed to justify the price to be paid, observing that the record in the case was devoid of "original cost values." *Re Lehigh Valley Transit Co. et al. (Application Docket No. 62416).*

Rates of Purchaser to Be Applied in Extended Territory

AUTHORITY was granted by the Pennsylvania commission for the acquisition by the Manufacturers Light & Heat Company of all the physical property and certain intangible property operated in public service by trustees for the creditors of Beaver-Butler Gas Company. An extension of the territorial rights of Manufacturers was also approved. The purchasing company proposed to make its general service rates applicable in the territory. The commission said that although the cost of service to the smaller consumers would be increased, this would be offset by improved service. No protest had been filed by customers against the sale or against the establishment of these rates.

Commissioner Buchanan objected to the proposal to make the purchasing company's rates effective and dissented from the commission action approving the transfer. *Re Landis et al. (Application Docket Nos. 62276, 62277).*

SEC Order Permitting Common Stock Participation Upheld

THE decision of the United States District Court affirming an order of the Securities and Exchange Commission approving a plan, under § 11(e) of the Holding Company Act, for dissolution of the United Light & Power Company upholds the principle that common stockholders may be permitted to share in a distribution of securities of a subsidiary, although under the "absolute priorities" rule in bankruptcy proceedings they would not receive anything because assets appear to be insufficient to cover preferred stock claims.

The commission, to determine participation, had projected prospective earnings much further into the future than would be permissible if the rights of preferred stock were to be treated as matured. Even on the assumption of liberal earning power and on the assumption that all earnings would be paid to preferred stockholders, said the court, it would take fifteen years to pay off dividend arrearages.

The commission conceded that the possibilities of the common acquiring value was remote but, nevertheless, was of the opinion that the common should be accorded 5.48 per cent participation in the light of the possibility that future earnings might prove to be greater.

The court recognized weighty reasons why the junior security holders should have an opportunity to recoup their losses in the future, even though probability of realization was not apparent from an estimate of prospective earnings within a reasonable time. This was said to be especially so where the financial affairs of the corporation were such that it would not be forced to liquidate apart from the necessity of complying with the provisions of the Holding Company Act.

It was said in part:

> The act was a command of the government. Contractual relationships must, *ex necessitatae,* give slightly in the face of such legislation. It is my view that Congress

never contemplated or intended that preferred shareholders of public utility holding companies were to be, if shrinkage of assets occurred, the sole owners of the corporate enterprise. Moreover, the case history of railroads—which gave rise to the "absolute priority" rule—pressed by increased truck and air transportation competition, is no economic analogue to the electric power industry. The railroad industry is decadent, whereas the electric power industry has all the characteristics of growth. This is an additional reason supporting the approach of the commission in the allocation of participation in the new venture, for the future potentialities of the electric power industry are incalculable.

The dominant purpose of the Bankruptcy Act, it was observed, is the elimination of claims without value, whereas the dominant purpose of the Holding Company Act is the enhancement of security values through integration for the protection of investors. *Re United Light & Power Co. 51 F Supp 217.*

Other Important Rulings

A WATER-DISTRIBUTING system delivering water to about seventy-five residences in an unincorporated residence district adjacent to a municipality in consideration of monthly payments was held by a California court to constitute a public utility subject to the jurisdiction of the commission, in an action to quiet title to the system, for an accounting, and for other relief. *Trask v. Moore et al. 140 P(2d) 73.*

The Interstate Commerce Commission, according to a Federal court decision, need not specifically rule on the contract or private carrier status of an applicant for temporary authority to operate as a motor carrier under the Motor Carrier Act. *Schenley Distillers Corp. et al. v. United States et al. 50 F Supp 491.*

The Securities and Exchange Commission held that where total net assets of a public utility subsidiary were less than the principal amount of the company's debt, preferred stock dividends had not been paid since 1931, and all voting power was concentrated in the common stock, the company should be recapitalized for the purpose of fairly and equitably distributing voting power. *Re Great Falls Gas Co. File No. 70-653, Release No. 4631.*

The Securities and Exchange Commission denied an application, filed pursuant to § 2(a)(8) of the Holding Cmpany Act, for an order declaring a company not to be a subsidiary of a registered holding company where the applicant failed to show that its management and policies were not subject to a controlling influence by the holding company, so as to make it necessary or appropriate in the public interest and for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed by the act upon subsidiaries. *Re Central Hudson Gas & E. Corp. (File No. 31-415, Release No. 4630).* To the same effect, *Re Jersey Central Power & Light Co. (File No. 31-62, Release No. 4623).*

The Pennsylvania commission, in granting an application by one transportation company and denying the application of another for authority to render additional service, said that it must give consideration to such matters as experience, fitness, managerial organization, financial resources, and kindred matters in determining which applicant is the better qualified to carry out the duties imposed by a certificate of public convenience where there is not enough business for both companies. *Re Cesario (Pa) Application Docket Nos. 22150, F 19, 17451, F 15.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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COLORADO PUBLIC UTILITIES COMMISSION

Re City of Lamar

[Application No. 5913, Decision No. 21392.]

Monopoly and competition, § 25 — Intervention by association.

1. A coöperative association which does not claim to be a public utility and is not asking for a certificate authorizing service in territory where a municipal plant seeks authorization to serve is not entitled to intervene and object to the granting of a certificate to the municipal plant, p. 198.

Monopoly and competition, § 33 — Territory served by association.

2. The rule that it is the duty of the Commission to protect a public utility from competition by one invading its territory does not require denial of a certificate to a public utility because the territory it proposes to serve may be served by a nonutility coöperative association, p. 198.

[September 27, 1943.]

APPLICATION *by municipality operating electric plant for certificate of public convenience and necessity authorizing service in certain territory; intervention by coöperative association denied, earlier certificates consolidated, and service in additional area authorized.*

APPEARANCES: Arthur C. Gordon, Lamar, for the city of Lamar; Wilkie Ham, Lamar, for Southeast Colorado Power Association; Thomas J. Murray, St. Louis, Missouri, for Rural Electrification Administration; E. T. Tengdin, Kansas City, Kansas, for Inland Utilities Company.

By the COMMISSION: On May 6, 1942, the city of Lamar, a municipal corporation, herein referred to as "applicant," filed with this Commission its application for a certificate of public convenience and necessity to authorize it to furnish electrical current for lighting, heating, and power purposes in certain territory in Prowers and Bent counties, Colorado, described in said application.

On June 6, 1942, the applicant filed an amendment to its application, by which the applicant applied for a certificate to furnish electrical current for lighting, heating, and power purposes in additional territory described therein.

During the year 1919, applicant purchased the plant, distribution system, and appurtenances of the privately owned public utility—which, prior thereto, had been furnishing electrical energy for lighting, heating, and power purposes, to the inhabitants of said city, from the owners thereof, and since that time has continously operated said municipally owned system.

Subsequent thereto, in Application No. 1276, Decision No. 2347,

this Commission authorized applicant to operate, construct, and extend its transmission lines and distribution system for the purpose of furnishing electric current for lighting, heating, and power purposes, to and within the following towns: Wiley, Hartman, and Granada (incorporated); McClave and Bristol (unincorporated) and the stations of Big Bend, May Valley, Kornman Junction, and Millwood; all situate, lying, and being on the line of the Arkansas Valley Branch of The Atchison, Topeka & Santa Fe Railway, in Prowers and Bent counties, Colorado.

In Application No. 1494, Decision No. 2946, this Commission authorized applicant to construct and extend its line and electric light and power service to Hasty, Colorado.

In Application No. 4188, by Decision No. 10751, this Commission authorized applicant to construct a 22-kilovolt, 3-phase transmission line from Millwood, Prowers county, Colorado, to the northwest corner of the incorporated limits of the town of Holly, Prowers county, Colorado, along the county highway or highways, a distance of approximately 6 miles, and serve the Inland Utilities Company with electric current at wholesale, as well as to serve individuals desiring electric service in the territory adjacent to the aforementioned transmission line between Millwood and Holly, said transmission line to extend from Millwood approximately two miles east, thence south approximately 3½ miles to Holly.

In the application in this proceeding and the amendment to the application, applicant prays that all of the above certificates of public convenience and necessity heretofore issued to it be consolidated into one certificate, to wit, a certificate of public convenience and necessity for the furnishing and supplying of the area described in this application as amended with electrical energy for domestic, commercial, and industrial purposes.

The applicant alleged that it is the owner of the only power plan in that area capable of generating sufficient electrical energy to supply said area with electricity for domestic, commercial, and industrial purposes; that the applicant has served and is now serving, the area described in the abovementioned decisions of this Commission; that to its best information, belief, and knowledge, there is no person, firm, or corporation claiming to be a public utility or holding any certificate of convenience and necessity ready, willing, or able, or desirous of serving said area or any part thereof; that the granting of the certificate prayed for would not be in conflict with the natural development of any other public utility holding any certificate of convenience and necessity.

At the hearing, the Southeast Colorado Power Association, herein referred to as the "Association," filed its petition for intervention, wherein it alleged that it is a coöperative association, organized under Chap. 41, 1935, C. S. A., and the Rural Electrical Act of 1936, enacted May 20, 1936, 49 Stat. at L., page 432, 7 USCA 901, etc., Articles of Incorporation having been filed August 14, 1937, and asked that its petition be treated as an answer to the application herein; that the application for a certificate of public convenience and necessity be denied, except as to such

certificate of convenience and necessity as would amount to a consolidation of previous certificates granted to the applicant and under which the applicant is now rendering service in accordance with said certificates; and that the certificate of necessity to the applicant to construct a line from McClave to Hasty be denied.

The Association alleged that it has 1,500 members in Prowers, Bent, Otero, Crowley, and Pueblo counties, and that each consumer is a member of said Association; that, through the aid of the Rural Electrification Administration, it had constructed several hundred miles of electric lines, construction work being started in November, 1937; that all property of said Association is pledged to the United States to secure payment of funds advanced Association; that a contract was entered into between the applicant and the Association for the furnishing of electric current to the Association by applicant; that the system of the Association was energized on June 22, 1938, by energy furnished under said contract with the applicant; that the Association has extended its lines until, at the time of the filing of its petition, it was serving 682 customers who reside from 2 miles west of the Kansas Line in Prowers county to ½ mile west of the east line of Range 50 in Bent county, Colorado; that one of its consumers is the Caddoa Constructors and another is the U. S. Engineer's office at Caddoa; that the vast majority of the consumers of electrical energy from the Association's system are farmers; that the Association has subscribers in the towns of Hasty and Caddoa; that prior to the commencement of construction by the Association, the communities of Wiley, McClave, Hartman, Bristol, and Granada, and others, were not adequately served; that only a comparatively small portion of the lines of the applicant was available for rural use or is now available for rural use; that, in the territory mentioned, the applicant does not have over 100 consumers; that the lines operated by applicant are inadequate to serve the community for which applicant seeks a certificate; that the cost of making connections with the transmission lines for a farm is prohibitive; that the territory west of McClave is not served at all by the applicant; that the Association is adequately serving the territory covered by this application; that it does not solicit customers of the applicant, seeking only to serve those who are not and were not served by applicant; that any person along the line of the Association is eligible to membership and to receive electrical service; that the applicant has not constructed the extension for which a certificate of convenience and necessity was granted by this Commission by Decision No. 2946 in Application No. 1494; that the applicant is unable to procure material to construct lines to serve the community described in the application; that the present and future public convenience or necessity does not require additional construction by the applicant.

At the commencement of the hearing, the applicant objected to the petition of intervention filed by the Association on the ground that the Association, which is a customer of the applicant, does not claim to be a public utility, but on the contrary, claims

to be a private corporation which has constructed its lines under a contract to obtain power from the applicant. The Association further contended that 70 or 80 per cent of the people in the communities described in the application are not receiving service through the Association but can receive such service if they want to, and that the territory which applicant claims to be ready, able, and willing to serve is territory which the Association is now serving; that additional service is not needed.

At the hearing, the attorney for the Association stated that he could not tell whether the Association is a public utility or not, and that their membership is open to anyone who wants to join and become a member.

It also appeared that applicant has a 23,000-volt transmission line extending to Crowley, to Wiley, and McClave, and to Holly; that it has no lines west of McClave nor south of the Arkansas river running west of Lamar to the town of New Caddoa: that at Holly, it sells electric energy under contract to the Inland Utilities Company, which serves the town of Holly; that it maintains and operates distribution lines and serves the inhabitants of the towns of Wiley, Bristol, and Hartman; that the town of Granada owns its distribution system and purchases electric energy from the applicant; that it is serving the communities of Kornman and May Valley; that it also serves at least four hay mills which are operating in the territory covered by the application; that under the contract between the applicant and the Association and its predecessors, the applicant is selling to the Association electricity at approximately 23,000 volts, to serve the Caddoa or John Martin dam, and supplies the same voltage for rural distribution system of the Association; that its generator capacity is 5,000 kilowatts and firm capacity of system is 3,000 kilowatts with its largest turbine out of service, the estimated demand being 900 kilowatts for the city of Lamar, which serves 1605 domestic and commercial customers in Lamar, 1,000 kilowatts for Caddoa dam, 1,200 kilowatts for Granada, the Inland Utilities Company, and commercial and industrial users in McClave, Wiley, Bristol, and Hartman, and in the rural areas, and 460 kilowatts for the Association, exclusive of the Caddoa dam; that applicant has sufficient finances to enable it to construct the facilities necessary to serve the territory described in the application and the amendment thereto.

Applicant's superintendent testified that the present application calls for a description of applicant's territory by township and sections, rather than by a description of the lines, and the object is to tie in with a reasonable border on each side of applicant's existing lines, and that applicant is not extending transmission lines into new territory, but is expressing its willingness to serve the territory for which the plant was designed; that is, apparently it now desires to serve an area, rather than along its specific lines as constructed; that he does not know of any plan of the applicant to build a line from McClave to Hasty, and that the applicant does not intend to build the line unless ordered to do so by this Commission; that the applicant does not serve any customers

between Hartman and Holly, although some years ago they served a mill and one or two small customers at Millwood; that, in addition, it also served 150 consumers along its lines; that on the average, customers of applicant are situated not over one mile from applicant's lines.

On July 11, 1938, applicant filed with this Commission its Application No. 4650, for authority to extend its system into the following territory: "Beginning at the town of McClave and running thence to the southwest corner of Township 22 in Range 48 west, in Bent county, Colorado; thence along said section lines 2 miles west; thence south 2 miles to the Santa Fe Trail; thence west 1½ miles along said Santa Fe Trail; thence south one mile; thence west 2½ miles; thence south 2½ miles; thence south one mile along the west line of Section 31 in Township 23 South, Range 49 West of the 6th P. M."

The Association's predecessor filed its petition in intervention and objections to the granting of that application, and prayed that that application for permission to invade an area already occupied and satisfactorily served by said Association's predecessor, be denied, and that the Association be allowed to continue to provide service for that area.

The application was set for hearing at various times, but the hearings were vacated at applicant's request, and that application has not been disposed of.

Application No. 4650 was made by the applicant for the purpose of serving the Caddoa Constructors, and the Caddoa dam after it was completed. After various negotiations between the applicant and the officers of the Association, the applicant agreed to permit the Association to serve the Caddoa Constructors and the adjacent territory.

On December 5, 1938, the Association, by its president and secretary, entered into a stipulation with the applicant, which was given the title of Application No. 4650 but not filed with us, in which the Association withdrew its petition of intervention in Applicaton No. 4650 and agreed that the petition of the applicant for a certificate of public convenience and necessity might be granted. It was stated therein that the applicant and the Association had entered into an agreement settling all controverted questions upon which the petition of intervention was based, and that upon due investigation and research, and upon settling the matters referred to in Par. 1 of contract of January 19, 1938, of which said stipulation was made a part, said Association agreed that grounds no longer existed for the petition of intervention.

The mayor of Lamar testified that the applicant would be serving this territory were it not for the fact that the applicant permitted the Association, as a customer, to serve that territory.

After the execution of the contract between the applicant and the Association on December 5, 1938, the applicant enlarged its plant. This enlargement cost $210,000, of which the applicant paid $135,000 and obtained the balance from the Public Works Administration. This enlargement was done largely to supply the Association with energy for its members and Caddoa dam.

It is the contention of the applicant that it is now serving the territory covered by protestant's transmission lines through its customer, the Association. On the other hand, it is the contention of the Association that it is serving the territory by means of its system, the electric current for which is purchased from the applicant.

[1, 2] The Association has never filed with this Commission any application for a certificate of public convenience and necessity authorizing it to construct any of its lines or to commence operations. And, as heretofore stated, of record contends that it is not a public utility. If it is a public utility and were here asking for a certificate of public convenience and necessity, the situation would be similar to that in Hatmaker v. Public Service Commission (1937) 127 Pa. Super Ct 352, 20 PUR(NS) 147, 193 Atl 123. There, the telephone company furnished telephone service to a number of patrons, without having secured a certificate of public convenience and necessity. That service had been furnished since 1919. In 1934, Hatmaker obtained from the Commission a certificate evidencing its approval of services he had been rendering without a certificate, also since 1919. Hatmaker filed a complaint with the Commission, alleging that the owner of the telephone company was illegally furnishing service without a certificate. The telephone company appeared and admitted operating without a certificate, and at the same time applied for a certificate. The Commission issued its certificate to the telephone company, authorizing the service it had theretofore been illegally rendering. The Pennsylvania court found that, even though it would be advantageous to have the two small telephone service lines consolidated, the Commission could not compel consolidation. It also held that the Commission could not deny the certificate to the telephone company and thus work the practical confiscation of the one by the other. But here, we do not believe that the Association is in a position to object. It does not claim to be a public utility, and it is not asking for a certificate. While under the rule announced in Public Utilities Commission v. Loveland, 87 Colo 556, PUR1931A 212, 289 Pac 1090, it is the duty of the Commission and the courts to protect a public utility from competition by one invading its territory, that rule does not require us to deny a certificate to one seeking to serve as a public utility because the territory it proposes to serve, in part, may be served by a nonutility or because some residents of the territory may be serving themselves through an individually, or coöperatively, owned system.

The facts show, and the Commission finds, that the public convenience and necessity require the furnishing of electric current for domestic, industrial and commercial users, as well as purchasers at wholesale, in the territory covered by this application; that applicant has adequate generating capacity to serve the territory in question, and pecuniarily, and otherwise, is able, willing, and qualified to furnish the proposed service; that the present and future public convenience and necessity require the granting of the certificate of public convenience and necessity requested by applicant

and described in the order following, and that certificate of public convenience and necessity should issue, as prayed for in the application.

FEDERAL POWER COMMISSION

Re Tennessee Gas & Transmission Company

[Opinion No. 93, Docket No. G-230.]

Certificates of convenience and necessity, § 77 — Natural gas pipe line — Public need — Conditions — Ability of applicant.

Authority to construct a pipe line for the transportation and sale of natural gas in interstate commerce should be granted where there is a progressively increasing demand for, and a diminishing supply of natural gas in the region affected, but this authority should be withheld until the applicant produces evidence of firm commitments for securing necessary financing, commitments for an adequate supply, and authorization from the War Production Board for materials required.

[July 5, 1943.]

APPLICATION *for authority to construct and operate pipe lines for the transportation and sale of natural gas in interstate commerce; application approved subject to conditions.*

APPEARANCES: Carl I. Wheat, Robert E. May, and Malcolm C. Hill, for the applicant; Charles V. Shannon, General Counsel, Edward H. Lange, and William L. Brunner, for the Commission; Wade O. Martin, Nat B. Knight, Jimmie Davis, P. A. Frye, and L. F. Sherer, for Public Service Commission of Louisiana; Roland Cocreham and H. W. Bell, for Department of Commerce and Industry of Louisiana; A. B. Hill and P. A. Lasley, for Department of Public Utilities of Arkansas; Willkie, Owen, Otis, Farr & Gallagher, and H. J. O'Neill, for Kentucky-Tennessee Natural Gas Corporation; Spencer W. Reeder, for city of Cleveland, Ohio; John D. Ellis, for city of Cincinnati, Ohio; James W. Haley and Tom J. McGrath, for National Coal Association; Welly K. Hopkins and Tom J. McGrath, for United Mine Workers of America; Samuel D. Young, for Southern Appalachian Coal Operators' Association et al.; R. Granville Curry and Frederick M. Dolan, for Anthracite Institute; Tom J. McGrath, for Railway Labor Executives' Association; William C. Burger, Walton Whitwell, Erle J. Zoll, Jr., and B. M. Hamilton, for Nashville, Chattanooga and St. Louis Railway Company, Louisville & Nashville Railroad, Illinois Central Railroad, Southern Railway, Cincin-

nati, New Orleans & Texas Pacific Railway, Harriman & Northeastern Railroad, Alabama Great Southern Railroad, and Gulf, Mobile & Ohio Railroad; T. Pope Shepherd, for Chattanooga Gas Company.

By the COMMISSION: This matter involves an application filed on November 25, 1942, under § 7 of the Natural Gas Act, 15 USCA § 717f, as amended, by the Tennessee Gas and Transmission Company for a certificate of public convenience and necessity authorizing the construction and operation of facilities, hereinafter described, for the transportation and sale of natural gas in interstate commerce.

Extensive public hearings have been held pursuant to reasonable notice duly given to all interested persons as deemed necessary by the Commission. The state of Tennessee, through the Chairman of its Railroad and Public Utilities Commission, participated in this proceeding. Intervenors included certain departments of the states of Louisiana and Arkansas, the municipalities of Cincinnati and Cleveland, Ohio, and, among others, a number of trade and labor associations.

The applicant is a Tennessee corporation. In 1940 it sought a certificate from us, but the application was dismissed for want of jurisdiction.[1] Thereafter the applicant, in a proceeding before the Railroad and Public Utilities Commission of Tennessee, secured authorization to construct and operate a pipe-line system to serve certain areas in Tennessee, but that Commission retained the proceeding on its docket pending a further showing by the company of its plan for financing. The instant application has been filed since the amendment[2] of § 7 of the Natural Gas Act and the Commission's dismissal of the company's first application. The company has incurred substantial expense and been put to considerable effort in the steps it has thus far taken toward the construction of the line.

The facilities for which authorization to construct and operate is now sought are to consist of a pipe line from near Opelousas, Louisiana, through the states of Louisiana, Mississippi, Alabama, Tennessee, and Kentucky to a northern terminal near Ashland, Kentucky, or such other point of termination as may be designated by the appropriate government agency. The projected route passes near Natchez, Mississippi, Muscle Shoals, Alabama, and Nashville, Tennessee. In the application, intention is manifested by the applicant to later seek a certificate for a breach line taking off from the line described above at Brace, Tennessee, and extending easterly by way of Chattanooga and Knoxville, Tennessee, to Asheville, North Carolina.

The facilities presently under consideration, however, are to form the "backbone" of an integrated pipe-line system consisting of the main transmission pipe line, compressor stations, gathering lines, and other appurtenances of such a system.

The principal service to be rendered

[1] See "Order Dismissing Application for Certificate of Public Convenience and Necessity for Want of Jurisdiction," adopted July 22, 1941, in Re Tennessee Gas & Transmission Co. Docket No. G-165, 35 PUR(NS) 57.

[2] This amendment was approved February 7, 1942.

by the proposed line is the delivery of natural gas at its northern terminus to natural gas companies or others now serving the Appalachian region and, thereby, to relieve the gas shortage now present in the region and imminently becoming intense and critical. In addition, it is planned to serve industries located along the route of the line.

In connection with the gas shortage in the Appalachian region, testimony was offered by the president of the Hope Natural Gas Company, the vice president and general manager of the Columbia Gas & Electric Corporation, and an engineer member of the Commission's staff. The two named companies, together with their affiliates, are estimated as furnishing approximately 60 per cent of the total natural gas requirements of the region. The Hope Company is the principal producing company of the affiliated Standard Oil Company (N. J.) natural gas companies operating in the region. The Columbia System consists of a large number of affiliated companies serving many of the principal markets in the area.

It is obvious from the evidence of the three witnesses that there is a progressively increasing demand for and a diminishing supply of natural gas in the region. To continue deliveries of natural gas to the distributing companies and industries of the region, many of which are engaged in the manufacture of vital war materials, requires that the failing supply be augmented. Moreover, apart from the immediate and necessary demands of the war economy, the Appalachian region embraces one of the most highly industrialized areas in the United States. The use of natural gas, both for domestic and industrial purposes, has been substantial for many years. It is the considered judgment of the two officials of the named gas companies that their companies will not have sufficient gas from Appalachian sources to meet their normal operations at the conclusion of the war emergency, and that the shortage is not related solely to the industrial war activities of the region. It appears from their expert testimony that the war emergency has simply accentuated the demand and accelerated the shortage.

The Hope Company, according to its president, expects to make sales of 89.8 billion cubic feet of gas in 1943. This amount compares with sales of 79.9 and 82.3 billion cubic feet in 1941 and 1942, respectively. No curtailments were made in the system during those years, but the witness' estimate of gas available to the company in 1943 is about 3 billion cubic feet less than his estimate of total requirements. He expects the necessity of a curtailment of 114 million cubic feet on a peak day in March, 1944.

The Columbia System official expects his system to have a shortage of 14 billion cubic feet in 1944. If the war should continue until January, 1946, the estimated shortage would increase to some 70 billion cubic feet. Even after the war it is estimated by the company that it will need sizable quantities of natural gas from outside Appalachian sources. This need is put at about 40 billion cubic feet for the first year following the termination of the war.

The War Production Board, aware

of the impending 1943 shortage in the region, has made an attempt to secure temporary relief by the issuance of its Directive No. 10. This directive provides for the delivery of approximately 7 billion cubic feet of natural gas to the Hope Company during this summer. Although Hope has received none of this gas as late as May of this year, certain deliveries by Panhandle Eastern Pipe Line Company under such directive to the Ohio Fuel Gas Company have commenced.

A further attempt at abatement of the shortage in the region has been made by an agreement between Panhandle Eastern Pipe Line Company and The East Ohio Gas Company proposing the delivery of 50 million cubic feet or more daily by the Panhandle system to East Ohio.

It is clear that many of the industrial users of natural gas in the Appalachian region are dependent upon natural gas as a fuel because of elements of temperature control and other manufacturing techniques.

The testimony of the Commission's engineer shows that in 1942 the supply of gas failed to meet the Appalachian region's total requirements of 490 billion cubic feet by 1 billion cubic feet, and failed to meet the peak-day requirements of 2½ billion cubic feet by 100 million cubic feet.

Estimates of supply and demands covering systems handling 80 per cent of the region's requirements indicate that for the year 1943 the shortage will run to some 15 billion cubic feet. The 1943–44 peak-day estimate will not be met by approximately 300 million cubic feet.

There appears to be no relief for the shortage from sources within the region. It is clear from the testimony of record that for a considerable period none of the companies operating in the region has had material quantities of gas available for sale to one another in addition to existing transactions. In fact, officials of the companies in the area indicated that relief must come from outside the region.

The testimony of the Commission's engineer demonstrates that substantial quantities of natural gas can be utilized advantageously in the region to offset contemplated excessive withdrawals from storage and to prevent the deliverability of storage fields from declining to a point where their usefulness is impaired.

Upon the record before us, it is apparent that no purpose will be served by further laboring the obvious. It is crystal clear that additional natural gas is needed in the Appalachian region. It follows, therefore, that a realistic view of this situation definitely shows that the public convenience and necessity will be served by the construction and operation of the applicant's pipe-line into the area, if the additional showing hereinafter referred to is made.

The Commission observes that none of the several intervenors appears to oppose the construction and operation of the line in the face of a finding by the Commission that the project is necessary in connection with the war effort. It is clear to us that the project is so necessary, and it is equally clear that the estimated postwar demands and requirements of the Appalachian region apparently fully justify the line.

In our opinion dealing with the Kansas Pipe Line proceeding in 1939,[3] we referred to certain minimum requirements an applicant must meet to entitle it to a certificate of public convenience and necessity under § 7. The applicant in this proceeding has not fully met those requirements. Its failure to do so has doubtless been caused, in part, by the difficulty of securing financial commitments in the absence of a determination by an appropriate authority that the proposed line will meet the need for substantial augmentation of the supply of natural gas in the Appalachian region. That determination we hereby make subject to the applicant's satisfaction of the requirements referred to hereinafter.

After carefully weighing the record herein, the Commission feels that the applicant should be given sixty days' time within which to submit, at further hearings in this proceeding, evidence of firm commitments for securing the financing necessary to effect the proposed construction to adequately serve the public, firm commitments for an adequate supply of natural gas, and such other evidence as will meet the minimum requirements laid down by us in the Kansas Pipe Line matter, *supra,* together with authorizations from the War Production Board for the materials required in the construction of the proposed pipe line.

At such further hearings, said applicant and all interested parties of record in this proceeding will be further heard concerning these requirements.

If the further showing by the applicant, Tennessee Gas and Transmission Company, on the matters herein required is satisfactory to this Commission, it is then our intention to authorize the issuance of a certificate of public convenience and necessity to the company to authorize the construction and operation of facilities for the transportation and sale of natural gas as presently requested by it.[4]

An order in accordance herewith will be entered.

EDITOR'S NOTE.—At the conclusion of a hearing on September 20, 1943, the Commission orally announced its decision to issue a certificate of public convenience and necessity to Tennessee Gas and Transmission Company. Subsequent to the issuance of Opinion No. 93, *supra,* changes were made by the applicant in the design and the route of the line at the request of, and in collaboration with, the War Production Board, in order more adequately to meet the requirements of the war program. Accordingly, on August 23, 1943, the application was amended to seek authorization to construct and operate a 24-inch gas transmission line 1,156 miles in length (instead of a 20-inch line as previously proposed).

Additional proof was submitted relating to authorization for materials, gas reserves, financing, and necessity for the project.

[3] See Commission Opinion No. 39, in Re Kansas Pipe Line & Gas Co. and Re North Dakota Consumers Gas Co. Docket Nos. G-106 and G-119, 30 PUR(NS) 321, wherein we took action, to all intents and purposes, parallel to the action taken in the instant proceeding.

[4] A pipe line, and appurtenant facilities, to be constructed of 20-inch pipe from a point near Opelousas, Louisiana, through Louisiana and Mississippi to a point near Muscle Shoals, Alabama, thence to Brace, Tennessee, and thence northeastward to a terminal near Ashland, Kentucky, or to such other terminal as the demands of the situation shall then require.

Upon the record as a whole the Commission concluded that the proposed pipe-line project was and would be required by the present and future public convenience and necessity. The applicant having demonstrated that it was able and willing properly to do the act and perform the service proposed and to conform to the provisions of the act and the requirements, rules, and regulations thereof, the Commission accordingly issued a certificate of public convenience and necessity for the project as proposed.

In the course of its later opinion the Commission stated that it was not authorized to regulate rates for natural gas sold directly to industrial consumers. Nor does its power to suspend rates extend to indirect sales of natural gas for industrial purposes. It appeared, therefore, that the Natural Gas Act did not vest the Commission with complete and comprehensive authority which would permit it to act as arbiter over the end uses of natural gas. Re Tennessee Gas & Transmission Co. (Fed PC) Opinion No. 93–A, Docket No. G–230, Sept. 24, 1943.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Lewis O. Hipkins et al.

[Assessment Docket Nos. 902–904, 906, 910–912.]

Commissions, § 30 — Jurisdiction over legal questions — Constitutionality of statute.

1. The Commission does not have jurisdiction to pass upon the constitutionality of the law under which it functions, p. 205.

Commissions, § 58 — Assessment against utilities — Motor carrier regulation.

2. The Commission properly computed assessments to be charged against motor carriers for regulation thereof by charging the entire salaries of its employees concerned in the regulation of motor carriers to such carriers and by apportioning indirect expenses to the motor carrier group on the basis of gross intrastate operating revenue, p. 206.

[July 6, 1943.]

HEARING *on objections to Commission assessment against motor carriers; objections dismissed.*

By the COMMISSION: Pursuant to the provisions of § 1201(c) of the Public Utility Law, the Commission, after notice to the above objectors, whose objections were similar, scheduled a hearing for May 11, 1943, on the objections filed to the 1939–40 general assessment.

Objectors were given the opportunity to appear and be heard with reference to the objections filed. By agreement with counsel for the objectors, hearings on the above-listed objections were consolidated, including that of James M. Naye, Inc., listed at Docket No. 910, which had not been

included in the calendar for the reason that the objector had paid its assessment.

In January, 1943, this Commission mailed bills to the public utilities under its jurisdiction, covering an assessment against them, pursuant to § 1201 of the Public Utility Law, for expenditures made by the Commission during the periods from January 1, 1939, to December 31, 1939, and from January 1, 1940, to December 31, 1940. Of the 16,985 utilities which received bills, 12 of them, all common carriers, filed objections to the assessment within fifteen days after receipt of the bills, whereupon they became entitled to a hearing upon the objections. Three of the objectors failed to appear at a hearing scheduled for April 14, 1943, or to be represented thereat, and accordingly their objections have been dismissed in a separate order and they have been directed to pay the assessment as it appears on their bills. One objector waived a hearing scheduled for April 13, 1943, and submitted statements for the record. Its objection was sustained in a separate order and the assessment was ordered canceled. One objector appeared at a hearing scheduled for April 29, 1943, but no evidence having been introduced in proof of its claim that the asesssment was incorrect, its objections were dismissed in a separate order and it was directed to pay the assessment as it appears on the bill. The remainder of this order will be devoted to a discussion of points raised by the objectors participating in the hearing of May 11, 1943. From the record in that proceeding, we make the following findings of fact and conclusions of law:

All but one of the written statements of objections filed by these objectors, all of them common carriers, were upon forms prepared by the association of which they are members, and consequently are identical. In the other instance, although a form was not used, the substance of the objection is practically identical with the substance of those stated on the forms, and can be treated in pari materia in our discussion.

[1] The first objection is *"that the provisions of Article XIII of the Public Utility Law, under which the assessment is purported to be made, were and are unconstitutional, illegal, and void."*

At no time or in no order by the Commission has any authority granted by Article XIII ever been used for the purpose of making assessments, this section of the law dealing entirely with penalties. The authority to make assessments against utilities under its jurisdiction is granted by Article XII (§ 1201) of the Public Utility Law, and all assessments have been made pursuant to the provisions thereof.

The question of constitutionality of the law under which it functions is not within the purview of the Commission, which is an administrative body created by the legislature to carry out certain duties imposed upon it by the legislature. Such question is within the province of our courts. The objections to the constitutionality of Article XIII are dismissed.

The second objection is that *"As shown by the explanation of bill for general assessments, the apportionments and assessments are estimated*

and not made upon the actual gross revenue as required by law."

No evidence was introduced in support of this assertion and as a matter of fact the printed explanatory statement which accompanies each bill makes no such statement. It states "If you filed revenue reports for either 1939 or 1940 or for both years, your assessment has been computed from those reports. If you failed to file a report, your revenue has been estimated in accordance with an opinion of the attorney general and the assessment has been fixed on that basis." Reports of gross intrastate operating revenue are required annually from all common carriers (and other utilities) whether they earn revenue under their certificates or not. This information is required for assessment purposes and all common carriers holding certificates in any part of the assessable year are sent the necessary forms and instructions for filing. Many carriers fail to file these reports through misunderstanding or carelessness — in 1939–40, 8,156 carriers, or nearly half the whole number under certificate, failed to report and their revenues were required to be estimated. The estimate of revenues for the carriers who disregard their obligation under the law, is a long and laborious process and is in a very large part responsible for the fact that assessments cannot be made as quickly as they should be after the close of the assessable year. The Commission would much prefer to receive reports of revenue rather than to be required to estimate, and this condition can be corrected by the carriers themselves through the filing of revenue reports. The objections as to estimated revenues are dismissed.

The third objection is that *"The estimated cost of regulating contract carriers by motor vehicle is believed inadequate."*

No evidence was introduced in support of this contention. The amounts of $53,060.65 for 1939 and of $41,764.75 for 1940, which were deducted as the estimated costs of regulating contract carriers by motor vehicle, were computed by means of a formula predicated on the actual number of contract carriers operating and contract carrier permits applied for, in their proportion to the total number of all carriers operating and all certificates and permits applied for, applied to the net cost of operating the Bureau of Motor Transportation. The objection as to the estimated cost of regulating contract carriers by motor vehicle is dismissed.

[2] The fourth objection is that *"The assessment is inequitable, unreasonable and excessive, since the method of computation and assignment of direct and indirect charges appear to place upon motor carriers a greater burden than the expenses occasioned by regulation thereof."*

No evidence was introduced to support this contention. Direct charges to the motor carrier group are primarily from payrolls. The salaries of employees concerned in the regulation of motor carriers are segregable from the salaries of any other employees of the Commission and inasmuch as these employees concerned in motor carrier regulation are specialists, having to do only with that phase of the Commission's activities, their entire salaries are so charged. Indirect expenses are apportioned to the motor carrier group on the basis of gross intrastate operat-

ing revenue in accordance with § 1201 (b) of the Public Utility Law. The objection as to the method of computation and assignment of direct and indirect charges is dismissed.

The fifth objection is that *"The deductions and basis of apportionment between groups appear on the face to be erroneously determined to the detriment of motor carriers."*

No evidence was introduced in support of this contention and the objection is dismissed.

The sixth objection is that *"The assessment is believed generally to be arbitrary, inequitable and invalid."*

This objection seems to be a repetition of the fourth objection and no evidence was introduced in its support. Disregarding for the moment the fact that the specific objections having fallen, the general proposition does likewise, the Commission deems it right and proper to again inform the utilities under its jurisdiction that since July 14, 1937, when it asked the coöperation of and consulted with several hundred representatives of the entire public utility industry for advice and assistance before inaugurating an assessment plan, it has diligently sought to avoid arbitrary, unreasonable or inequitable actions. The books and records of the Commission have been checked and rechecked as well as audited by public accountants and the representatives of the larger utilities; matters of policy have been reviewed by the technical staff and the Commission itself before adoption; every effort has been made to ensure that every charge was not only correct in amount but was properly charged or distributed in accordance with the law. Section 1201(f) of the law provides that the Commission's records shall be open to inspection of all interested parties. None of the objectors availed themselves of this provision. The sixth objection is dismissed.

Objector, James M. Naye, Inc., having paid its assessment on March 1, 1943, is not included in the following payment order, although its objections are dismissed for the same reasons as those of the other objectors.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Conestoga Transportation Company

[Complaint Docket No. 13881.]

Rates, § 641 — Intervention by Federal agent — Price Control Act — Increase during war.

1. The Office of Price Administration has the right to intervene in a case before the Commission relating to an increase in freight rates where the

carrier, in complying with the "30-day notice" and intervention acquiescence requirements of the Office of Price Administration under the Second Price Control Act, has thereby acknowledged the interest of that agency in rate matters and where the Commission did in fact allow intervention, p. 209.

Rates, § 641 — Intervention by Federal agent — Price Control Act — General increase during war.

2. A general rate increase was effected by the filing of a tariff, so as to justify the Office of Price Administration to intervene in the proceeding before the Commission seeking approval of the tariff, where it was established that all the rates and charges for the transportation of property had been increased and that the over-all increase in rates represented an average increase of 22 per cent, p. 209.

Rates, § 186 — Increase — Burden of proof.

3. A carrier seeking authority to increase rates has the burden of proving the reasonableness thereof, p. 211.

Rates, § 181.1 — Increase during war — Price Control Act.

4. Disposition of an application to increase freight rates should be made upon the basis of the general welfare and public interest during a war emergency, and an allowance of a general freight increase which is not needed by the carrier to preserve its corporate credit and financial stability would be detrimental to the general welfare and public interest, p. 211.

[July 12, 1943.]

APPLICATION *by transportation company for authority to increase freight rates; denied.*

By the COMMISSION: This matter involves the filing of Tariff Freight Pa. P.U.C. No. 9 of Conestoga Transportation Company, respondent, to become effective November 30, 1942, providing a general increase in rates for the transportation of property. On November 23, 1942, the Office of Price Administration filed a protest and requested the Commission to suspend the increased rates pending investigation of their reasonableness and lawfulness.

An inquiry and investigation was instituted on the Commission's own motion on November 25, 1942, and on that date the operation of Tariff No. 9 was suspended from November 30, 1942, to May 30, 1943, and on May 10, 1943, the operation of said tariff was further suspended to August 30, 1943. A hearing was held on February 18, 1943. Briefs were subsequently filed by the Office of Price Administration and Conestoga Transportation Company.

Respondent was incorporated in Pennsylvania on December 4, 1931. It is operated by five trustees under a voting trust agreement. At December 31, 1942, it rendered street railway, motorbus, and motor freight service in Lancaster and surrounding territory.

As at December 31, 1942, respondent operated 39 streetcars (exclusive of work cars, etc.), 106 busses and 16 trucks. For the year ended December

31, 1942, the operating revenues totaled $1,296,768.09, segregated as follows:

Classification	Amount	%
Street railway	$210,101.44	16.20
Motorbus	1,022,146.62	78.82
Motor freight	64,520.03	4.98
Totals	$1,296,768.09	100.00

Respondent's Exhibit No. 5 shows that the operations of the freight department for the year ended December 31, 1942, resulted in a net loss of $5,190.17; however, the figures include increases in operating costs which were in effect for only four months of 1942. By letter dated February 23, 1943, respondent submitted, in compliance with a request of record, a pro-forma income statement showing that the annual net loss would amount to $8,829.35 under conditions which existed during the last four months of 1942.

Tariff No. 9 provides increases in rates for the transportation of property, ranging from 1 per cent to 76 per cent, the average being 22 per cent. It was filed in order to provide additional revenues to meet increased costs of labor, tires, gasoline, and repair parts for equipment. The effect of the proposed rates on the operating revenues of the freight department, according to respondent's estimate, would be an increase of 12½ per cent, or $8,065, annually.

In connection with the proposed increases, the Office of Price Administration, in its brief, offers the following interpretation of the first section of the Second Price Control Act of October 2, 1942:

"It required all governmental agencies to take vigorous measures to hold prices and charges for goods and services at September 15, 1942, levels, except where an increase is necessary to the effective prosecution of the war or to the correction of a gross inequity. The notification and intervention provisions of the Second Price Control Act are designed to effectuate in the common carrier and public utility fields the general policy of maintaining prices except where adjustments are necessary for the effective prosecution of the war or in the correction of gross inequity."

The foregoing interpretation indicates that in the adjudication of proceedings of this character, regulatory bodies are required to consider, in addition to the application of customary rate formulae, the effect which increases in rates may have on the economic stabilization program during the prosecution of the war; whether such increases are required for the utility to continue its rendition of service to the public; and whether such increases are necessary in order to correct gross inequities.

The Office of Price Administration concludes its brief as follows:

"The Office of Price Administration submits that the increase in question should not be granted unless (1) it is necessary to the continuance of the freight division of the Conestoga Transportation Company and (2) the losses sustained by the freight division cannot be absorbed by the Conestoga Transportation Company without jeopardy to the general financial condition of the company."

[1, 2] Respondent denies that the OPA has jurisdiction over the issues in this case or the right to intervene, giving as a reason that the increases are not "general increases."

The claim that OPA does not have

the right to intervene in this proceeding is unfounded for the reasons that (1) respondent, in complying with the "30-day notice" and intervention acquiescence requirements of OPA under the Second Price Control Act has thereby acknowledged the interest of the OPA in rate matters, and (2) the Commission did, in fact, allow intervention. Respondent's contention that the rates involved in this case are not "general increases" is not supported by the evidence. It is established that all the rates and charges for the transportation of property have been increased and that the over-all increase in rates represents an average increase of 22 per cent. It is our opinion that a general increase in rates for the transportation of property was effected by the filing of Tariff No. 9.

Operations of the Conestoga Transportation Company for the year ended December 31, 1942, resulted in an income available for return of $220,503.34, and a net income of $151,396,28, after provision of $65,698.36 for interest on respondent's $1,632,400 of outstanding bonds. A condensed income statement for the year 1942, as prepared from the annual report filed by respondent and other data of record, segregated by departments, follows:

	Bus	Street Railway	Freight	Combined
Operating revenues	$1,022,146.62	$210,101.44	$64,520.03	$1,296,768.09
Operating expenses:				
Operation and maintenance expenses	$597,835.64	$154,197.87	$62,072.40	$814,105.91
Operating taxes and licenses	87,689.96	6,656.25	4,931.92	99,278.13
Depreciation	64,699.81	38,697.84	2,705.88	106,103.53
Total operating expenses, exclusive of income taxes	$750,225.41	$199,551.96	$69,710.20	$1,019,487.57
Net operating revenues	$271,921.21	$10,549.48	$5,190.17*	$277,280.52
Deduct: Provision for income taxes				60,197.18
Remainder				$217,083.34
Add income from lease of carrier property				3,420.00
Income available for return				$220,503.34
Add nonoperating income				4,458.94
				$224,962.28
Deduct income deductions				73,566.00
Net income				$151,396.28

* Denotes red figures.

Respondent's income available for return for 1942 shown above as $220,503.34, when related to the depreciated book value of respondent's property, the only indication of value of record, plus an allowance for working capital, indicates a rate of return earned of 7.43 per cent, as shown below:

Undepreciated fixed capital.		
Bus	$1,037,033.02	
Railway	2,611,384.60	
Freight	79,735.30	
Organization and franchises	13,615.88	
Total undepreciated book value		$3,741,768.80
Reserve for depreciation:		
Bus	$419,041.04	
Railway	360,235.69	
Freight	45,887.17	
Total reserve for depreciation		825,163.90
Depreciated book value of property		$2,916,604.90
Allowance for working capital (Estimated)		50,000.00
Tentative rate base (Rounded)		$2,966,000.00
Rate of return earned		7.43%

It would appear from the above table that the over-all result of respondent's operations for the year 1942 could absorb the loss of the freight transportation department without jeopardizing the general financial condition of respondent company.

OPA claims that the over-all operations of respondent are sufficiently profitable to carry the small freight losses without injury and that adjudication of the case should be on this basis. Respondent disagrees with this view, contending that each department should be required to pay its own way.

We do not deny respondent's contention, so long as its application is limited to normal times. But these are not normal times. The national interest requires that respondent's position be examined from an over-all point of view and, from that point of view, respondent cannot be said to require a freight-rate increase. Even in normal times, upon the basis of the facts stated, while we might grant the freight-rate increase, it is quite possible that we would adjust respondent's rates for other service downward by an equal or perhaps even greater amount.

[3] The burden of proof in this case is upon respondent and in view of the position taken, it made no attempt to submit evidence relating to the reasonableness of the rates or earnings in the two other departments of operations. Upon the basis of the present record, therefore, we are not now in a position to make an adjudication of the rates of the three departments separately. In fact, the instant proceeding is limited to the freight rates. Evidence is in the record, however, relating to the book values of the properties of the several departments, but no detailed investigation of the propriety or reliability of the figures has been made. As indicated herein the combined operations of respondent resulted in a net income available for distribution to stockholders of $151,396 in the year 1942, after giving effect to the loss incurred by the freight department in the amount of $5,190. The effect on respondent by virtue of this loss has been of small consequence.

[4] It appears to us that the instant case presents an entirely new situation by virtue of the policy of the Federal government to stabilize price levels. It is our opinion that the disposition of this case should be made upon the basis of the general welfare and public interest during the period of war emergency and that an allowance of a general freight increase to respondent, which does not need it to preserve its corporate credit and financial stability, would be detrimental to the general welfare and public interest. Accordingly, we are of the opinion that the increased rates in Tariff No. 9 should be denied.

SECURITIES AND EXCHANGE COMMISSION

Re The United Corporation

[File Nos. 54-33, 59-25, Release No. 4478.]

Intercorporate relations, § 19.7 — Simplification of holding company system — Complexity of system.

1. A holding company which provides no services for its subsidiaries contributes nothing to the normal functioning of the system companies, and is economically unnecessary to their operations unduly and unnecessarily complicates the holding company system within the meaning of § 11(b)(2) of the Holding Company Act, 15 USCA § 79k(b)(2), p. 231.

Intercorporate relations, § 19.7 — Simplification of holding company system — Complexity of structure.

2. The corporate existence of a holding company extends the holding company pyramid beyond the degree permitted by the "great grandfather" clause of § 11(b)(2) of the Holding Company Act, 15 USCA § 79k(b)(2), where in some instances there are three holding companies superimposed upon operating companies in the system and in other instances the number of tiers exceeds that number, p. 231.

Intercorporate relations, § 19.7 — Simplification of holding company system — Complexity of corporate structure.

3. The top holding company unduly and unnecessarily complicates the structure of the holding company system of which it is a part where the preferred stock of the top holding company rests upon junior equity securities in the portfolio and earnings on the portfolio securities cannot support the outstanding preferred stock of the company, p. 232.

Corporations, § 18 — Voting power distribution — Holding company system.

4. Voting power is unfairly and inequitably distributed between the common stock of a holding company and the system securities generally, where the common stock of the holding company, which controls the entire system, has little claim to the system earnings and such claim is small in amount in relation to the combined consolidated operating revenues and gross income of the system and where the combined book assets of the subsidiary systems are over 50 times the common stock book equity of the parent company p. 234.

Corporations, § 18 — Voting power distribution — Holding company system.

5. Voting power is unfairly and inequitably distributed between the preferred and common stock where the preferred stock, with a claim of about 82 per cent of the total capitalization and surplus, has only 15 per cent of the voting control and where the common stock, representing 85 per cent of the voting power in the parent holding company, has only a small claim to the earnings of the company, p. 235.

Intercorporate relations, § 19.7 — Simplification of holding company system — Divestment of holding company control.

6. A plan for the divestment of control of a holding company system under § 11(e) of the Holding Company Act, 15 USCA § 79k(e), may not be ap-

proved under the standards of §§ 11(b)(2) and 11(e) of the act where it fails to assure that upon its consummation the elements of control or controlling influence will cease to exist and fails to afford assurance of prompt and effective conformance with the provisions of § 11, where the plan provides no assurance that it will be carried out with reasonable promptness and makes no provision for the redistribution of voting power so as to make it fair and equitable to the persons affected thereby, p. 236.

[August 14, 1943.]

CONSOLIDATED PROCEEDINGS *under §§ 11(b)(1) and 11(b)(2) of the Holding Company Act relating to simplification of holding company system; plan filed pursuant to § 11(e) disapproved and action directed pursuant to § 11(b)(2).*

APPEARANCES: Roger S. Foster, Harry G. Slater, and Sidney H. Willner, for the Public Utilities Division of the Commission; Whitman, Ransom, Coulson & Goetz, New York, New York, by Richard Joyce Smith and Robert G. Miller, for The United Corporation; E. A. Stuebner, Philadelphia, Pennsylvania, on behalf of certain preferred stockholders; Gabriel Caplan, New York, New York, on behalf of Hettleman & Co., a stockholder.

By the COMMISSION: This is a consolidated proceeding under §§ 11(e), 11(b)(1), and 11(b)(2) of the Public Utility Holding Company Act of 1935, 15 USCA § 79k(e), (b)(1), (2), with respect to The United Corporation (sometimes referred to as "respondent" or "United"), a registered holding company. On March 4, 1941, United filed an application pursuant to § 11(e) requesting our approval of a "plan for the divestment of control" of its subsidiaries. In substance, the plan, hereinafter discussed, provides that United will proceed when advantageous to it, to reduce its holdings in each of its statutory subsidiaries to less than 10 per cent of the outstanding voting securities, and pending such reduction will refrain from voting any of such securities save with the express "permission" of this Commission. The plan requires submission to the stockholders of the company, and if it is approved by a majority vote, United will request an order that it has ceased to be a holding company within the meaning of the act. United claims that complete compliance with § 11(b) will be achieved by means of this plan.

On July 28, 1941, we issued a notice of and order for hearing on the 11(e) application, a notice and order instituting proceedings under §§ 11(b)(1) and 11(b)(2), and an order consolidating these proceedings for hearing.[1] After several postponements,[2] we directed on November 3, 1941, that the hearing be reconvened and that evidence be received "first, in connection with the specific issues raised under §§ 11(e) and 11(b)(2)

[1] (1941) Holding Company Act Release No. 2907.

[2] (1941) Holding Company Act Release No. 2942; (1941) Holding Company Act Release No. 3057; (1941) Holding Company Act Release No. 3084.

and, thereafter, in accordance with the further direction of the Commission."[3] Hearings were commenced on November 17, 1941, and were duly held from time to time in accordance with this direction, and were concluded on June 18, 1942. On the latter date, the record with respect to the issues raised under §§ 11(e) and 11 (b)(2) was closed, subject to the receipt of certain exhibits pursuant to stipulation of counsel.[4]

In accordance with our previous direction, counsel for the Public Utilities Division filed its brief first. This direction was made in our opinion overruling, among others, United's objections to the admission of certain exhibits, for the purpose of eliminating "any possibility that respondent will not have full opportunity to meet all contentions and issues arising in this proceeding."[5] After the briefs were filed, we heard oral argument on October 8, 1942.[6]

The Issues

The issues under § 11(b)(2) of the act with respect to United are (1) whether the corporate structure or the continued existence of United unduly or unnecessarily complicates the structure of the holding company system of which it is a part, or unfairly or inequitably distributes voting power among the security holders of United itself and of the system; (2) whether, in contravention of the "great-grandfather" clause, United has subsidiary companies which themselves have subsidiary companies which are holding companies; and (3) what United shall be required to do to ensure compliance with § 11 (b)(2) of the act in the event we determine that United offends § 11 (b)(2) in any or all of the foregoing respects.

With respect to the 11(e) plan filed by United, we are required to determine whether the plan is necessary to effectuate the provisions of § 11(b)(2) and is fair and equitable to the persons affected thereby.[7]

History of United

A. *Organization*

The United Corporation was incorporated on January 7, 1929, under the laws of Delaware. Its principal organizers were three leading investment banking firms, J. P. Morgan & Co., Drexel & Co. (the Phila-

[3] (1941) Holding Company Act Release No. 3109, 41 PUR(NS) 3, 11.

[4] A petition by respondent to reopen the record was denied in our order of August 15, 1942, Holding Company Act Release No. 3739.

In June, 1943, Sanford L. Schamus filed a petition alleging, inter alia, that he was a stockholder of The United Corporation and requesting leave to intervene as a party to this proceeding, "or (in the alternative) to be heard, to introduce documentary evidence, to produce witnesses, to cross examine, to file proposed findings of fact and briefs and to be heard on oral argument." This petition was filed about one year after the closing of the record and about eight months after the oral argument in this proceeding, and accordingly is not timely at this date. In addition, we do not deem any of the matters with respect to which petitioner seeks to present argument or introduce evidence material or relevant to the issues raised in this proceeding. The petition is therefore denied.

[5] (1942) Holding Company Act Release No. 3592, p. 13 (mimeographed).

[6] A reply brief was filed by respondent on October 21, 1942. Permission to file the same was granted by us at the oral argument.

[7] Other issues raised by United in the course of these proceedings have been disposed of in (1941) Holding Company Act Release No. 3109, *supra*, footnote 3; (1941) Holding Company Act Release No. 3127; 1941 Holding Company Act Release No. 3181, 41 PUR(NS) 302; (1942) Holding Company Act Release No. 3592.

delphia branch of J. P. Morgan & Co.),[8] and Bonbright & Co., Inc.

For some years prior to 1929 Bonbright & Co. and Drexel & Co. had been closely connected with the affairs of The United Gas Improvement Company (UGI) and its subsidiary, Public Service Corporation of New Jersey (Public Service), in the capacity of both investors and bankers. Bonbright & Co. had been associated with Drexel & Co. in the financing of Public Service. American Superpower Corporation, an investment company sponsored by Bonbright & Co., held in its portfolio 53,000 shares of the capital stock of UGI, $50 par value, and 800,000 shares of the common stock of Public Service. Drexel & Co. was the banker for UGI, and owned 48,765 shares of the capital stock of UGI and 34,500 shares of the common stock of Public Service, representing an investment of almost $6,000,000. Bonbright & Co. wished, however, to expand its activities in the electric utility field, and considered American Superpower to be a convenient vehicle for that purpose. Bonbright & Co. sought to interest J. P. Morgan & Co. and Drexel & Co. in the matter, believing that their participation would prevent competing interests from entering into the territories which Bonbright and Morgan-Drexel might designate as their exclusive sphere of influence. Morgan-Drexel declined the invitation but discussions were continued from time to time over a period of years.[9]

In the middle of 1928 J. P. Morgan & Co. reconsidered its decision. It appears that in the late 1920's, certain financial groups, such as those headed by Insull and Associated Gas, were engaged in efforts by buy controlling interests in various public utility properties or systems. It was further apparent that these operators might seek to extend their influence into UGI, which with its subsidiaries controlled a considerable number of gas and electric and nonutility properties in Pennsylvania, Delaware, Maryland, Connecticut, and New Jersey. These operators had banking connections of their own, and their interest in UGI also appeared to Drexel & Co. as a source of danger to its position as banker for UGI.[10]

[8] This relationship was formally severed in 1940.

[9] On November 2, 1938, Landon K. Thorne, president of Bonbright & Co. and one of the principal officers of American Superpower, testified before this Commission in another proceeding as follows:

"We, Bonbright & Company, were great enthusiasts on the electrical industry and its growth and future prospects and we were associated with Drexel & Co. in the financing of the Public Service Corporation, and were anxious to get Morgan or Drexel interested with us in the general development of the industry. At that time, there was a great many people buying properties at high prices, and we felt that if we could get into a coöperative relationship with people that had the associations and contacts which Morgan had it would greatly strengthen the position of security holders from, let us say, pirating by new people injecting themselves into the territories we were interested in. We talked to Morgan and Drexel. First Drexel for maybe a year, and later with Morgan. First to get them interested in the American Superpower Company with us. They didn't want to do that, and we had long discussions lasting over several years, . . ."

Testimony of individual members of the Bonbright-Morgan-Drexel groups, and of others not presently associated with United, was presented in other proceedings before this Commission, and portions thereof are part of this record pursuant to stipulation of counsel.

[10] Edward Hopkinson, Jr., a partner in Drexel & Co., testified with respect to these matters, that the directors and leading stockholders " . . . were very much concerned . . . that they were going to wake up some fine day and find one of these outside operators who were going around paying fancy prices for territory had, if not control, a very substantial interest in UGI. We all felt we

Accordingly, in the spring of 1928, discussions were held among several of the directors and leading stockholders of UGI and Public Service, to determine how best to meet this potential danger to their position of power and office. Those participating included, besides the three banking firms which were later to organize United, Richard B. Mellon of The Koppers Gas & Coke Co.; Charles Day, Samuel T. Bodine, and John E. Zimmermann, directors of UGI; and Thomas N. McCarter, president of Public Service. An agreement was finally concluded to work in concert and to consult each other before buying or selling UGI stock in the future. As a means of keeping rival operators out of UGI, this understanding was of limited value. As of April-June, 1928, UGI had outstanding about 3,900,000 shares of its capital stock, and presumably a substantial amount of this stock was available in the open market to any group adequately financed and bent upon its acquisition. The action taken by those participating in the discussions accordingly might be considered simply as a decision to meet jointly any challenge to their position in UGI and subsidiaries.[11]

Shortly thereafter J. P. Morgan & Co. purchased in the open market 81,800 shares of the capital stock of UGI and 25,000 shares of the common stock of Public Service at a cost of about $13,300,000. The purchase was made after notice to its conferees, and with their full approval. This investment was no mere temporary expedient to prevent a large block of UGI and Public Service stock from possibly falling into the control of unfriendly interests; it signified a decision by J. P. Morgan & Co., after many years of hesitation, to enter the utility field.[12] Several months later J. P. Morgan & Co. received an option from General Electric Co. to purchase the latter's stock

would be awfully sorry to have that happen. . . .

"I don't recall anything particular about any underwriting arrangements, because they were already in satisfactory existence, except the very negative one that I assume if some other outfits such as Insull or Associated had come in and gotten control of these properties, they would have probably brought their own bankers in, although I don't believe they would have thrown any of us out."

[11] The late John E. Zimmermann, then president of UGI, in characterizing the agreement stated that " . . . we decided we would act as a partnership, wouldn't buy or sell without consulting the others, as a protection from what you might call a raid on the UGI."

Edward Hopkinson, Jr., stated with reference to this understanding: "I don't think it ever went any further than an understanding that we were all interested in keeping UGI, if possible, out of being made a speculative football, and that if any of us had any plans or knew of anything that might have a bearing on that situation we would talk the thing over together before any of us took any action. I don't think we ever bound ourselves not to act individually, but merely a gentleman's understanding that if you are thinking of doing anything we would all sit down and talk it out together."

[12] Up to this time J. P. Morgan & Co., as distinguished from Drexel & Co., had shown little interest in public utilities. However, for some years the Morgan partners had been discussing among themselves the advisability of "taking a more active interest in the utility business." After coming to an affirmative conclusion, it was decided, according to George Whitney, partner in J. P. Morgan & Co., the "logical place" for J. P. Morgan & Co. "to begin to take an interest was in the companies in which our Philadelphia office had been closely associated with, namely, UGI and Public Service." And Edward Hopkinson, Jr., testified:

" . . . Drexel & Company had had substantial holdings of both UGI and Public Service for a considerable period prior to this time, probably holdings large enough in relation to our total investments, to make it unwarranted for us going any more heavily in those assets. So if we were going to increase our position in them, New York would be the logical place to do it."

in Mohawk Hudson Power Corporation. Already burdened by its previous purchases, J. P. Morgan & Co. did not believe it advisable to make this additional large investment. Conversations were thereupon held with its conferees and it was agreed that a new company should be formed to which they might transfer their holdings in UGI and Public Service as well as the Mohawk Hudson securities on which J. P. Morgan & Co. held an option.[13] Following this understanding, J. P. Morgan & Co. agreed on December 5, 1928, to purchase from General Electric the Mohawk Hudson securities at an alleged cost of $23,634,120. The month following, The United Corporation was formed. As will be set forth later, within a few days United acquired the interests in UGI, Public Service, and Mohawk Hudson, held by the organizers and American Superpower.

The immediate objectives of the organizers appear to have been to relieve Morgan-Drexel of their extensive investments in utility securities[14] and to eliminate the apparent threat to UGI and subsidiaries from rival financial interests.[15] In addition thereto, United was designed by its organizers as a device for gaining a strategic foothold in the utilities located on the Eastern Seaboard and contiguous territories and to assure the organizers a preëminent position in these utilities. Upon organization, therefore, United increased its acquisitions to include in its portfolio substantial investments in Columbia Gas & Electric Corporation, Consolidated Edison Company of New York, The Commonwealth & Southern Corporation, Consolidated Gas, Electric Light & Power Company of Baltimore, and American Water Works & Electric Co.

The bankers' interest in these utility enterprises was easily discernible. No doubt so large a group of utilities would be in need of refinancing or new capital from time to time, thus providing a source of underwriting profits and fees for depositaries, registrars, and transfer agents, and it was the sense of the organizers that they receive the lion's share of these emoluments. A statement of the bankers' position in this matter is contained in a letter written by Thomas S. Lamont, a partner in J. P. Morgan & Co., to Lansing Reed, a member of the firm

[13] Harold Stanley, a partner in Morgan-Drexel, testified with respect to the organization of United:

"These investments (in UGI, Public Service, and Mohawk Hudson) ran into quite a substantial figure, and it wasn't convenient or appropriate to carry such a large amount of securities in the banking portfolio." . . .

Q. Now, when did the partners of J. P. Morgan & Co. first determine that their combined investment in Mohawk Hudson and UGI and Public Service was too great for them prudently to carry alone?

A. I should think in the fall of 1928, certainly prior to the time that a definite agreement was made to purchase the Mohawk Hudson. . . .

Q. Now, what considerations led J. P. Morgan & Co. to buy the Mohawk Hudson stock, if, as an investment, it was going to be too great for J. P. Morgan & Co. to carry?

A. Well, I still wouldn't put it quite that way. That is to say, on the question of too great to carry. But it was more convenient, and more prudent, to form a company to carry these combined securities than to carry it all ourselves.

[14] See notes 12, 13, *supra.*

[15] Edward Hopkinson, Jr., testified that the organizers of United had a " . . . feeling that if some strong responsible group had a substantial interest in these properties, it would in effect serve notice on speculative . . . purchasers, that there was a strong group already in there, who, with their nucleus of holdings, could probably rally the independent stockholders against the destructive raids that we felt had been taking place on other companies."

of attorneys who handled the legal phases of the organization of United.[16] This letter was dated January 2, 1929, five days prior to the incorporation of United, and stated in part:

"At Harold Stanley's suggestion, I am enclosing a batch of advertising circulars regarding various investment trusts. He suggested that I call to your attention the Utility Equities Corporation and especially the first paragraph thereof which I have marked. In this connection the names of two other investment trusts occurred to me, the purposes of which are in a way similar to the one proposed,[17] in that they make little if any pretense of diversification, and their purpose is obviously to insure continued control by the bankers (Lee Higginson & Co.) and their clients. These are the Swedish American Investment Corporation and the Solvay American Investment Corporation. In the circular advertising the sale of their fixed obligations to the public, no mention is made of diversification." [18]

Thus, it is evident that United was conceived by its creators to play an important rôle in the utility companies in which it was to acquire substantial interests, and was not designed as a mere "investment company."

B. *United Present Portfolio*

The bulk of United's portfolio investments consists of public utility securities. At December 31, 1941, the total portfolio assets, per United's books, amounted to $148,414,937, of which $143,940,092, or 96.9 per cent of the total, consisted of public utility securities, the remaining $4,474,845 comprising nonutility investments purchased subsequent to June 30, 1938.[19] The principal public utility holdings, of an aggregate book amount of $132,618,473, or 89.6 per cent of the portfolio assets, consist of common stock in its direct holding company subsidiaries in the following amounts:

	Number of Shares	% of Voting Control
The United Gas Improvement Company	6,066,223	26.1
Public Service Corporation of New Jersey	988,271	13.9
Niagara Hudson Power Corporation	2,333,107	23.2
Columbia Gas & Electric Corporation	2,410,856	19.6

United's public utility investments are concentrated chiefly in the common stock of holding companies controlling or owning operating utilities along the Atlantic Seaboard and adjoining areas, and to some extent in the Midwestern States and the Great Lakes region.

[16] The legal fees for the organization of United were paid by J. P. Morgan & Co. The latter was subsequently reimbursed by United.

[17] It has been conceded that "the one proposed" refers to The United Corporation.

[18] About ten years later Harold Stanley, a partner in Morgan-Drexel, stated that Thomas S. Lamont "was wrong." This statement was made in the course of his testimony in another proceeding before this Commission. One of the issues in that proceeding was the extent of the control or influence exercised by Morgan Stanley & Co., an investment bank composed of former members of Morgan-Drexel, over Dayton Power and Light Company, a direct subsidiary of Columbia Gas & Electric Co. and an indirect subsidiary of United. See Re Dayton Power & Light Co.—Morgan Stanley & Co. (1941) 8 SEC 950, 38 PUR (NS) 129, aff'd (1942) 126 F(2d) 325, 43 PUR(NS) 240.

[19] The remainder of United's assets consists of cash and government obligations, amounting to $12,513,720 at December 31, 1941.

Purchases of nonutility securities were made pursuant to an application filed by United for permission to invest part of its cash, not exceeding $8,000,000, in such securities. See Re The United Corp. 4 SEC 663.

(1) UGI, a registered holding company, controls gas and electric properties located in the industrial and commercial areas of Pennsylvania, New Jersey, Connecticut, Delaware, and Maryland. Its chief source of income until recently was its subsidiary, Philadelphia Electric Company, which provides electric energy to the city of Philadelphia and adjoining areas.[20] Philadelphia Electric is interconnected, and interchanges electric energy, with Pennsylvania Power & Light Company, a nonaffiliated company, and Public Service Electric & Gas Co., a subsidiary of Public Service Corporation of New Jersey. On December 31, 1941, the UGI holding company system included, besides a group of nonutility properties, over twenty gas and electric operating companies, with consolidated book assets of $753,471,938, and consolidated operating revenues for 1941 of $102,-109,227.[21]

(2) Public Service Corporation of New Jersey was until recently a holding company subsidiary both of UGI and of United,[22] and its operating companies provide gas and electric and transportation facilities within the state of New Jersey. Its principal subsidiary is Public Service Electric & Gas Co., which, as we have seen, is interconnected with Philadelphia Electric and Pennsylvania Power and Light Co. On December 31, 1941, the consolidated assets per books of Public Service Corporation of New Jersey and its subsidiaries were $720,-424,886 and their consolidated operating revenues for 1941 were $151,-158,933.

(3) Niagara Hudson Power Corporation,[23] through its subsidiaries, provides hydroelectric energy to a large area in the central and northern part of New York state as far as Canada, including such industrial and commercial centers as Buffalo, Syracuse, Schenectady, Utica, Albany, and Troy. Two of its subsidiaries are located in Canada, and part of their electric energy is transmitted for distribution in the areas serviced by Niagara Hudson in the United States. Niagara Hudson also controls valuable riparian rights and water-power sites and is likely to be an important influence in any future hydroelectric developments in upstate New York. The Niagara Hudson electric transmission system is interconnected with the transmission lines of nonassociate

[20] We have recently approved a plan filed by UGI under § 11(e), pursuant to which UGI has disposed of its common stock holdings in Philadelphia Electric and Public Service. The details of the plan are discussed below. Since the plan has been approved and is in effect, we have assumed throughout this opinion that the disposition has actually taken place.

[21] Public Service is not included in the consolidated statements for UGI and its subsidiaries.

[22] Public Service was held by this Commission to be a subsidiary of United and UGI in (1941) Holding Company Act Release No. 2998, 10 SEC —, aff'd (1942) 129 F(2d) 899, 45 PUR(NS) 350, cert. den. (1942) 317 US 691, 87 L ed —, 63 S Ct 266. Under its 11(e) plan, UGI disposed of its common stock holding in Public Service. The method of distribution is discussed below.

Public Service is not a registered holding company, claiming exemption as a holding company pursuant to Rule U-2 of the Rules and Regulations under the act.

[23] Niagara Hudson filed an application pursuant to § 2(a)(8) of the act, 15 USCA § 79b(a)(8) for a declaration that it is not a subsidiary of United, but this application was subsequently withdrawn.

Niagara Hudson is not a registered holding company. At the date of the closing of the record it was claiming an exemption as a holding company pursuant to Rule U-2 of the Rules and Regulations under the act.

electric utility companies, including those of the Consolidated Edison Company system and The Hydro-Electric Power Commission of Ontario. On December 31, 1941, the consolidated book assets were $645,323,548 and 1941 operating revenues were $103,154,475.

(4) Columbia Gas & Electric Corporation,[24] through its principal subsidiaries, owns and operates facilities for the production, transmission, and distribution of natural, artificial, and mixed gas. The Columbia Gas system provides retail gas service in Ohio, Pennsylvania, West Virginia, Kentucky, New York, Maryland, Virginia, and Indiana. Some of the subsidiaries provide electric energy to communities located in Ohio, Kentucky, and Indiana within the general boundaries of the gas service area. The Columbia Gas system includes about thirty electric and gas utility companies in addition to a considerable group of nonutility companies. On December 31, 1941, the consolidated book assets of Columbia Gas and its subsidiary companies were $709,099,107 and gross revenues for 1941 were $119,598,246.[25]

The remainder of United's public utility investments consists of common stockholdings in amounts less than 10 per cent of the outstanding voting securities of each of the companies. As of September 30, 1942, United held 5.1 per cent of the outstanding voting securities of its affiliate,[26] The Commonwealth & Southern Corporation;[27] 2.7 per cent of American Water Works and Electric Co.; 2.8 per cent of Consolidated Gas Electric Light & Power Company of Baltimore; and 1.5 per cent of Consolidated Edison Company of New York.[28]

Supplementing United's substantial

[24] Columbia Gas is a registered holding company under the act. It filed an application pursuant to § 2(a)(8) of the act for a declaration that it is not a subsidiary of United, but this application was subsequently withdrawn.

[25] These figures do not include the assets and revenues of Columbia Oil & Gasoline Corporation and its subsidiary companies.

We have recently approved a plan under § 11(e) of the act for the liquidation and dissolution of Columbia Oil. See Re Columbia Gas & E. Corp. (1942) Holding Company Act Releases Nos. 3829, 3885, aff'd (1943) 134 F(2d) 822, 49 PUR(NS) 415. The plan was enforced in the district court. See (1943) — F Supp —. The plan has since been consummated.

[26] Section 2(a)(11) of the act defines an affiliate of a specified company as: "any company 5 per centum or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by such specified company."

[27] Commonwealth & Southern is a registered holding company and through its subsidiaries provides electric and gas in Alabama, Georgia, Tennessee, Mississippi, and in parts of Illinois, Ohio, Indiana, and Michigan.

[28] This company was formerly known as the Consolidated Gas Company of New York and is a combined holding and operating company. The Consolidated Edison system is interconnected with the transmission system of Niagara Hudson

Although it does not enter into our decision in this case, we note that in 1933, according to the Federal Trade Commission Report, the kilowatt-hour output of United's four subsidiaries and the above-mentioned companies was approximately 27 per cent of the entire national output. This group of companies also had almost 30 per cent of the installed hydroelectric capacity and controlled approximately 63 per cent of the total electrical output in the 10 out of the 15 Eastern, Southern, and Midwestern states in which this group had major operations. The gas output of these companies approximated 25 per cent of the entire national output for utility distribution. See Utility Corporation, 70th Congress, 1st Sess. Doc. 92, Pt. 52, pp. 600, 601.

During 1941, the electric energy sold to ultimate consumers by United's four subsidiaries and Consolidated Edison was 19 per cent of the total sold throughout the United States. The gas sales of these companies during 1941 were considerable in relation to the total sales for the nation, but exact percentages are not readily available because of the different types of gas sold.

minority interests in these companies is a maze of intercorporate connections, chiefly through ownership of voting securities and through interlocking directorates. UGI owns 2.9 per cent of Commonwealth & Southern, American Superpower Corporation owns 9.3 per cent, and these amounts added to United's interest aggregate 17.3 per cent.[29] American Superpower, it will be recalled, was affiliated with Bonbright & Co. in 1928, participated in the organization of United and transferred to United its substantial holdings in UGI and Public Service.[30] At the present time American Superpower owns 5.6 per cent of the voting securities of United and is its second largest stockholder.[31] UGI owns 8.7 per cent of Niagara Hudson, and thus United and UGI together hold 31.9 per cent.[32] UGI owns 2.7 per cent in American Water Works and Electric Co., a like amount is held by Columbia Gas, and these with United's holdings total 8.1 per cent. Niagara Hudson owns 1.5 per cent of Consolidated Edison Company, American Superpower 0.6 per cent, and these with United's interest total 3.6 per cent.

C. *Banker Control and Interlocking Directorships*

The organization of United also marked the extension of the bankers' influence in the subsidiaries of United. This is readily evident from the interlocking directorates between United and each of its subsidiaries as well as among the subsidiary companies themselves.

From 1929 through February, 1938, the organizers constituted a majority of the board of United. The year United was organized its board consisted of five members: George Whitney, Thomas S. Gates, Alfred L. Loomis, Landon K. Thorne, and George H. Howard. The first two were partners in Morgan-Drexel, and the third and fourth were the principal officers of Bonbright & Co. and American Superpower. George H. Howard was elected president and director of United in February, 1929, and was still serving in these capacities at the closing of this record.[33] He was a lawyer and had resigned from the law firm of Simpson, Thacher & Bartlett to join United. He had been a friend of Thorne and Loomis, who had suggested him for the office, and

[29] UGI previously owned 28.5 per cent of the outstanding voting securities of Public Service and this amount plus United's interest equaled 42.4 per cent. As already noted, under its 11(e) plan UGI had disposed of its stockholdings of Public Service

[30] In addition we may note the securities held by the following in American Superpower as of September 30, 1942:

	No. of Shares
Thorne, Loomis & Co., Inc	359,498 common
Commercial Enterprises Corporation	30,602 preference 4,246 common
The United Gas Improvement Company	4,080 preference
The Commonwealth & Southern Corporation ..	250,000 common

Thorne, Loomis & Co., Inc., owns 83.9 per cent of the voting stock of Commercial Enterprises Corporation which in turn owns 1.1 per cent of the voting securities of United.

At that date voting power was exercised by the preferred stock of American Superpower because of dividend arrearages.

[31] The largest stockholder of United is St. Regis Paper Company in which the late Floyd L. Carlisle had a considerable stock interest. St. Regis owns 5.9 per cent of United's outstanding voting securities.

[32] In addition, J. P Morgan & Co. own 0.04 per cent and American Superpower 0.4 per cent, or an aggregate total of 32.34 per cent.

[33] We note that he resigned on April 22, 1943, and that W. M. Hickey was elected director and president in his place.

this suggestion proved satisfactory to the other parties in interest.

In 1930, the board membership was increased to eleven.[34] The board included George Whitney, Harold Stanley, Edward Hopkinson, Jr., of the Morgan-Drexel group, and Landon K. Thorne and Alfred L. Loomis of Bonbright & Co. and American Superpower, and George H. Howard. Of the remaining five, four were also directors in one or more of the subsidiaries and one was head of an affiliate of United.[35] The composition of the board remained unchanged during 1930–1933. In 1934 the board consisted of nine members but the banker representation remained unchanged.[36] In 1935 the board consisted of five members and has remained at that number through 1941. From 1935 through 1938 the board included George H. Howard, George Whitney, and Landon K. Thorne, the last of the group which came to United's board during 1929–1930.

On March 28, 1938, the United States Supreme Court held in the Electric Bond and Share Case, 303 US 419, 82 L ed 936, 22 PUR(NS) 465, 58 S Ct 678, 115 ALR 105, that the registration provisions of the Public Utility Holding Company Act were constitutional, and on that day United filed with this Commission its notification of registration. On the same day George Whitney and Landon K. Thorne resigned from the board of United, apparently for the reason that § 17(c) of the act, 15 USCA § 79q(c) prohibits interlocking directors and officers between registered holding companies and investment bankers.[37] Since then several other changes have taken place in the composition of United's board.[38]

Upon the organization of United the bankers also increased their representation on the board of the subsidiaries. Drexel and Bonbright, as previously noted, had been closely connected with the affairs of UGI and its subsidiary, Public Service, both as bankers and investors, and at least since 1928 these bankers also were represented on the board of directors of these companies. Thomas S. Gates of Drexel & Co. has served on the board of UGI since 1928 and was a director of Public Service during 1928–1930. Landon K. Thorne of Bonbright & Co. was a director of

[34] Section 13 of the By-Laws of United provides that the number of directors may be increased by an amendment to the By-Laws adopted by a majority vote of the board of directors or by majority vote of the capital stock having voting power. In that event the additional directors may be elected for the unexpired term by the directors or at the annual metting of the stockholders or at a special meeting called for that purpose.

[35] They were Philip G. Gossler, president and director of Columbia Gas; Thomas N. McCarter, president of Public Service; the late John E. Zimmermann, director of UGI, Public Service, and Niagara Hudson; and B. C Cobb, head of Commonwealth & Southern.

Thomas N. McCarter and John E. Zimmermann also had been participants in the discussions preceding the organization of United.

[36] Philip G. Gossler, Thomas N. McCarter, and John E. Zimmermann resigned and Hendon Chubb was elected.

[37] Hendon Chubb also resigned. In their stead were elected Floyd L. Carlisle, Wesley A. Sturges, and John J. Burns.

Whitney, Thorne, and Chubb had been reelected as directors at the annual meeting of United held on February 1, 1938.

[38] Wesley A. Sturges resigned effective December 31, 1938, and on January 9, 1939, Edward H. Luckett was elected to the board. On January 6, 1941, however, Edward H. Luckett resigned and was succeeded by Wesley A. Sturges. Luckett continued as vice president of United.

On July 15, 1941, Floyd L. Carlisle and Roy K. Ferguson resigned from the board. The latter had been a director of United since 1938, and vice president from 1933 through 1936.

UGI during 1928–1932 and served on the board of Public Service with Alfred L. Loomis of Bonbright & Co. from 1928 to 1934. Following the organization of United, the banker group obtained additional representation. Harold Stanley of J. P. Morgan & Co., who had been on the board of Columbia Gas at least since 1928, served as director of UGI from 1929 to 1932, and of Niagara Hudson from 1929 to 1934. Edward Hopkinson, Jr., of Drexel & Co. became a director of UGI and Public Service in 1930 and continued in that capacity up to some time prior to 1938. Finally, after joining United in 1929, George H. Howard was elected director of each of the direct subsidiaries of United, serving on the board of UGI and Niagara Hudson from 1929 to 1935, and of Public Service and Columbia Gas from 1930 to 1935.

Personal ties were further strengthened with the election of one or more of the directors of each subsidiary to the board of United and associate companies. The late Floyd L. Carlisle, a director of Niagara Hudson since 1929, served as director of United from 1930–1935, 1938–1941, of UGI from 1932–1934, and of Columbia Gas from 1931–1934. The late John E. Zimmermann, director of UGI at least since 1928 and of Public Service from 1929 was on the board of United from 1930–1934 and of Niagara Hudson from 1929–1934. Thomas N. McCarter, director of Public Service at least since 1928 and its president until recent years, was on the board of United from 1930 through 1934, and of UGI at least from 1928 through sometime after 1934. Philip G. Gossler, president and director of Columbia Gas at least since 1928, served on the board of United from 1930–1934.

D. *Acquisition of Portfolio*

United acquired its portfolio assets during 1929–1931 and carried these assets on its books approximately at $593,000,000. A substantial part thereof was obtained through private exchanges by United of its common and preferred stock for capital stock of public utility holding companies held by the organizers of United and the investing public. These exchanges have enabled United to obtain a considerable part of its portfolio without the use of cash, and at the same time provided for United a convenient way of securing for its capital stock the wide distribution necessary for listing on securities exchanges.

To carry out its vast acquisition program, United was authorized by its charter to issue 5,000,000 shares of preference stock and 24,000,000 shares of common, all to have one vote per share. Pursuant to charter authorization, the board of directors fixed for the preference stock a cumulative dividend of $3 per share. It was further provided that the preference stock was to receive $50 in the event of liquidation, and $55 upon redemption, plus any accrued and unpaid dividends. The stated value of the no-par common stock was fixed at $5 per share. In addition, United issued option warrants entitling holders thereof to purchase at any time without limit United's common stock at $27.50 per share. There were 3,732,059 of these warrants outstanding on December 31, 1929, and none

had been exercised by December 31, 1941.

Pursuant to a plan formulated prior to the organization of United, Morgan-Drexel and American Superpower transferred to United their respective interests in UGI, Public Service, and Mohawk Hudson. Morgan-Drexel transferred to United 130,565 shares of the $50 par value capital stock of UGI, 59,500 shares of the common stock of Public Service and the Mohawk Hudson securities consisting of 63,360 shares of the second preferred stock, 350,957 shares of the common stock and 124,740 option warrants for common stock. In exchange for these securities and for $701,801 in cash, Morgan-Drexel received 600,000 shares of United's $3 cumulative preferred stock, 800,000 shares of common stock and 714,200 option warrants. From American Superpower United acquired 53,000 shares of capital stock of UGI and 800,000 shares of Public Service in exchange for 344,187 shares of its preferred stock, 2,210,853 shares of common and 1,000,000 option warrants.[39] In addition, J. P. Morgan & Co. and Bonbright Electric Corporation, the parent of Bonbright & Co., each purchased from United for a consideration of $10,000,000 in cash, 400,000 shares of common stock and 1,000,000 option warrants.

We note in passing that part of the common and preferred stock of United received by J. P. Morgan & Co. was offered privately to a select group of clients and "to people interested in the utility or allied situations." Besides recouping in part the cash investments of the Morgan interests in UGI, Public Service, and Mohawk Hudson, this offering was conceived as a means of furthering the purposes for which United was organized. This was disclosed in a letter written on January 28, 1929, by Thomas S. Lamont to someone apparently dissatisfied with the amount of United's capital stock allotted to him. It stated in part:

"The United Corporation was formed with certain definite purposes in mind, one of which was to help in the better coördination of public utility interests on the Eastern Seaboard. It was for this reason that it was necessary for us to give greater consideration to important public utility people and bankers in this section of

[39] The approximate cost to Morgan-Drexel of the securities transferred to United plus cash was as follows:

48,765 shs. of UGI 34,500 shs. of Public Service	$6,000,000
81,800 shs. of UGI 25,000 shs. of Public Service	13,300,000
Mohawk Hudson securities	23,634,000
Cash	701,801
	$43,635,801

The securities issued to Morgan-Drexel in exchange were represented on the books of United as follow:

600,000 shs. of pfd., $50 stated value	$30,000,000
800,000 shs. of common, $5 stated value	4,000,000
Paid-in surplus	16,000,000
	50,000,000

Though not in this record, and not entering into our decision in this case we note that the Federal Trade Commission report shows that the cost to Morgan-Drexel and American Superpower of the securities transferred to United was $69,642,121, while they were recorded on the books of United at $122,840,825. (These figures include the cash item of about $700,000, *supra*.) The market value, of these securities at January 10, 1929, was $141,678,031. The market value of the capital stock (exclusive of the option warrants) received by the organizers from United was a little over $211,547,000 at average prices to June 29, 1929. See Utility Corporations, Pt. 54, (p 278), 70th Cong. 1st Sess.

the country than to our friends elsewhere. . . ."

The transactions with Morgan-Drexel, Bonbright, and American Superpower were concluded in January, 1929, and obtained for United in all 183,565 shares of the $50 par value capital stock of UGI, 859,500 shares of Public Service, the Mohawk Hudson securities plus $20,701,801 in cash. Thereafter United substantially increased its holdings in UGI apparently, to a large extent, as a result of exchanges with UGI stockholders. In the latter part of 1929, UGI effected a recapitalization, pursuant to which UGI converted each of its outstanding $50 par value capital stock into 5 shares of no par value common stock and ⅛ of a share of preferred. As a result of this recapitalization and subsequent purchases, United held at December 31, 1929, a total of 4,151,-846 shares of UGI no par common and 94,360⅓ of preferred; recorded on its books at $136,060,111.[40]

During 1930 United's portfolio was considerably expanded, principally as a result of solicitations addressed to the stockholders of UGI and Columbia Gas & Electric Corporation to exchange their stock in the two companies for the capital stock of United. These solicitations brought United's investment in UGI's common stock to 6,066,223 shares at a recorded cost of $214,447,419, and increased its stake in Columbia Gas to 2,424,356 shares of common stock. The Columbia Gas stock together with 84,769 shares of the common stock of Columbia Oil & Gasoline Corp. were carried on the books of United at December 31, 1937 at $135,725,768.[41] As a result of these exchanges the outstanding common stock of United was increased from 7,252,515 shares to 12,-360,531½ shares, and the preferred stock from 1,779,367 to 2,489,064⅔ shares. The books of United carried the UGI and Columbia Gas acquisitions during 1930 at $213,892,544.[42] Of this amount, $61,024,965, representing the stated value of the stock issued, was credited to capital, and the remaining $152,867,579 was credited to paid-in surplus.

United's holdings of 859,500 shares of Public Service obtained from Morgan-Drexel and American Superpower was supplemented by further acquisition during 1929–1930. The total amount acquired and held by United was 988,271 shares recorded on its books at $78,461,600.

Subsequent to the organization of Niagara Hudson on June 18, 1929, United acquired 1,673,250 shares of the common stock of Niagara Hudson, in addition to a considerable number of option warrants issued by that

[40] The preferred stock was sold in 1930.

[41] The solicitation to the stockholders of Columbia Gas was made through a circular which stated in part:

"It is expected that the close association of the United Corporation with Columbia Gas & Electric Corporation as a result of this acquisition of stock will facilitate the making available of the great natural gas resources of Columbia system to the large industrial and domestic markets along the eastern seaboard."

This circular was the joint product of Philip Gossler, president and director of Columbia Gas, and Harold Stanley, a partner in Morgan-Drexel and a director of Columbia Gas.

[42] Part of United's portfolio assets was held by its wholly owned subsidiary, New York United Corporation. This subsidiary was organized on July 13, 1929, and was dissolved on September 13, 1939. Throughout this opinion United and New York United will be treated as one.

company.[43] On December 30, 1930, this stock and the various option warrants were carried at $27,208,690. In 1931 United acquired 4,070,000 additional shares of Niagara Hudson common in exchange for 2,170,666 shares of its common stock. This acquisition was recorded on United's books at $40,700,000, of which amount $10,853,330, representing the stated value of United's common stock issued in exchange, was credited to the capital stock account of United, and $29,846,670 was credited to paid-in surplus. This exchange increased United's holdings in Niagara Hudson to 5,743,250 shares, and these with the option warrants previously acquired were recorded on United's books at $67,908,690. In 1932 Niagara Hudson issued new common stock to be exchanged on the basis of 1 share of new common for 3 shares of the common stock then outstanding. United thereupon obtained for its prior holdings 1,914,417 shares of the new common stock and comparable adjustments were made with respect to the option warrants.[44] The last major change in United's investment in Niagara Hudson occurred as a result of the consolidation on February 1, 1937, of Niagara Hudson (constituent) and its subsidiary Mohawk Hudson to form the present Niagara Hudson Power Corporation. The plan of consolidation provided for the issuance of a $10 par value common stock of the new corporation for each share of the common stock of the constituent Niagara Hudson. With respect to the second preferred stock of Mohawk Hudson the holders were given a choice of taking for each share thereof either 7 shares of the common stock of Niagara Hudson or 1 share of its 5 per cent second preferred stock and 1½ shares of its common stock. Acceptance of the first alternative involved the waiver of any accrued and unpaid dividends on the Mohawk Hudson second preferred stock. United accepted the first alternative and as a result of the entire exchange increased its investment in Niagara Hudson to 2,351,007 shares of the common stock or 24.5 per cent of the amount outstanding, as against its previous holdings of 1,914,417 shares of common stock in the constituent Niagara Hudson, amounting to 21.9 per cent of the

[43] The options were as follows:

Class "A" option warrants entitling holders to purchase common stock at $35 per share	752,460
Class "B" option warrants entitling holders to purchase common stock at an aggregate price of $50 for each 3½ shares	436,590
Class "C" option warrants entitling holders to purchase a unit consisting of 1 share of common and ⅛ Class "A" option warrants at $25	300,000

Of these, 643,312 of the "A" option warrants were acquired together with the purchase of the common stock. 109,147 of the "A" option warrants and the 436,590 "B" option warrants were acquired by United in exchange for the 124,740 common stock option warrants of Mohawk Hudson held by United.

[44] Class "A" option warrants entitling holder to purchase common stock at $105 per share 250,819⅛

Class "B" option warrants entitling holder to purchase common stock at an aggregate price of $50 for each 1⅛ share 145,530

Class "C" option warrants entitling holder to purchase units consisting of ⅛ of a share of common and ⅙ of a Class "A" option warrant at $25 per unit 300,000

On November 30, 1934, the 300,000 Class "C" warrants expired and the investment account in Niagara Hudson was reduced by $300,000, this being their allocated cost. The same amount was charged to earned surplus.

The "A" warrants were sold at a loss during 1941.

total outstanding. This new acquisition brought the carrying value of United's investment in Niagara Hudson to $74,282,283.[45] Subsequent dispositions reduced United's holdings in Niagara Hudson to 2,333,107 shares of common stock, or 23.2 per cent of the total outstanding.

During 1929–1930 United also acquired 1,798,270 shares of common stock of Commonwealth & Southern Corporation in addition to 1,005,000 option warrants and this investment was recorded on United's books at $35,590,010.[46] From 1930 through 1932 United acquired a group of investments, which included 203,900 shares of common stock of Consolidated Gas Company of New York (the present Consolidated Edison Company) for $24,823,554; 33,175 shares of the common stock of Consolidated Gas, Electric Light & Power of Baltimore for $3,782,374; 34,342 shares of common stock of Electric Bond & Share Company for $5,969,-201;[47] 48,705 shares of the capital stock of The Lehigh Coal & Navigation Company for $2,220,945; 63,002 shares of common stock of American Water Works & Electric Company for $5,982,000; and 32,038 shares of Societe Lyonnaise des Eaux et de l'Eclairage for $5,179,171.[48]

E. Subsequent History of United

The subsequent history of United is marked by a sharp and steady decline in the market value of its portfolio assets. The securities acquired by United were carried upon its books at "cost." The cost represented the amount of cash paid for these securities or, in the event of an exchange, the stated value of the capital stock issued therefor plus the amount credited to capital surplus. On December 31, 1931, when United's acquisition period was virtually concluded, the carrying value of the portfolio assets amounted to $593,918,455. In the years following there were relatively small changes in the composition of the portfolio,[49] and its carrying value at June 30, 1938, before restatement, was $581,285,157. The market value of these assets declined, however. At December 31, 1934 the market value of United's portfolio assets was only $139,183,583. At June 30, 1938, their market value was $141,884,081, or $439,401,076 less than their de-

[45] United held in its portfolio 62,370 shares of Mohawk Hudson second preferred, recorded at $6,673,590. The carrying value of the new common stock of Niagara Hudson was obtained by adding the carrying values of the common stock of the old Niagara Hudson ($67,608,693) and of the Mohawk Hudson second preferred.

The number of option warrants as adjusted in 1932 was not affected by the consolidation.

[46] These option warrants entitled United to purchase common stock of Commonwealth & Southern at $30 per share. Of these warrants, 80,000 were purchased for $720,000 and the remaining 925,000 were acquired together with the common stock

[47] In 1933 United received as a dividend about 515 shares of the common. This increased United's holdings to 34,857 shares, but the carrying value remained unchanged.

The 34,857 shares were restated as of June 30, 1938, on United's books at $305,006, and were sold at a loss during 1941.

[48] These shares were sold during 1933–1934 at a loss of $73,889 which was charged against earnings.

[49] In the 1934 annual report to its stockholders, United stated with respect to the investments in its statutory subsidiaries that " . . . its principal purposes were to acquire the securities of companies in the utility field and . . . while possessing the right to dispose of any such holdings, it was not the then intention that the corporation should engage in trading in securities as a business. In line with this expressed purpose, your directors have so far deemed it desirable to retain these holdings representing important operating properties serving well established and largely contiguous territories."

clared value.[50] The first formal consideration to these market conditions was given on October 6, 1936, on which date the directors of United created a reserve for the depreciation of securities in the amount of $350,000,000 and charged the same to the capital surplus account.[51] Finally, in August, 1938, it was decided to reduce as of June 30, 1938, the carrying value of United's investments to their market value on December 31, 1937. The market value of the portfolio assets on that date was $144,528,214 and thus the proposed restatement of portfolio called for a write-down in the amount of $436,756,943. This amount was charged against earned surplus, the reserve for depreciation and capital surplus, thus eliminating the entire earned surplus and reducing capital surplus to $13,110,060.[52]

Beside adjusting the carrying values to the market values prevailing at that time,[53] the restatement of investments eliminated the great disproportion between the declared value of United's major investments and the value of these same investments on December 31, 1937, per books of the issuing companies.

These disparities prior to the write-

[50] The difference between the carrying and the market value of the portfolio at December 31st for the following years is:

Year	Cost or Declared Value on United's books	Market Value
1931	$592,821,748	$269,405,995
1932	592,821,863	272,256,212
1933	586,498,080	188,249,625
1934	582,965,025	139,183,583
1935	582,965,025	226,609,077
1936	581,285,157	243,695,920
1937	581,285,157	144,528,214
1938 ..... (June 30)	581,285,157	141,884,081

[51] In explanation of its failure to take similar action in prior years, United informed its stockholders:

"Because of wide fluctuations in market values of the securities in the portfolio, the board of directors in previous years has hesitated about setting up a reserve for depreciation of securities owned. Although any such reserve must necessarily be more or less an arbitrary figure, the board of directors decided in October, 1936, that the time had come when such a reserve might properly be created and charged against the paid-in surplus of the corporation."

[52] Prior to these charges, earned surplus amounted to $15,118,941. Capital surplus amounted to $84,748,062 consisting of $26,603,941 left after deducting the depreciation reserve, $58,117,966 representing surplus arising from the reduction in February, 1938, of the stated value of the common stock from $5 to $1 per share, and $26,155 resulting from the retirement of capital stock reacquired by United and hitherto held in its treasury.

[53] Since June 30, 1938, the market value of the portfolio as of December 31st of each of the years from 1938 was as follows:

Year	Restated Value on United's books	Market Value
1938	$144,528,214	$153,457,481
1939	148,770,770	174,332,279
1940	148,770,770	119,913,002
1941	148,414,937	55,683,617
1942 ..... (Mar. 31)	148,414,937	49,131,857

The above figures include approximately $4,474,000 invested in nonutility securities after June 30, 1938. See note 21, *supra*.

down are shown in the accompanying table:

Name of Company	No. of Shares Common Stock	Stated Value per United's Books	Value per Books of Issuing Company	
			Corporate Basis	Consolidated Basis
U.G.I.	6,066,223	$214,447,419	$62,451,765	$68,378,465
Public Service of N. J.	988,271	78,461,600	22,549,379	23,572,239
Niagara Hudson	2,351,007	74,282,283[1]	30,313,884	30,762,926
Columbia Gas	2,424,356	135,725,768[2]	40,906,158	42,227,432
Commonwealth & Southern	1,798,270	35,590,010[3]	9,467,891	10,167,418
Consolidated Edison	203,900	24,823,554	8,931,023	9,833,893
Total		$563,330,634	$174,620,100	$184,942,373

[1] Includes value applicable to "A" option warrants entitling holders to purchase 250,819⅛ shares of Niagara Hudson common at $105 per share and "B" option warrants entitling holders to purchase 145,530 shares at $50 for each 1⅛ shares of such stock. See Note 44, *supra*.

[2] Includes the carrying value of 84,769 shares of Columbia Oil common stock. We have recently approved a plan under 11(e) of the act with respect to the dissolution of Columbia Oil, whereby the common stock was allotted $1 per share in full settlement of all rights. See Note 25, *supra*.

[3] Includes the carrying value of option warrants entitling holders to purchase 1,005,000 shares of Commonwealth & Southern common at $30 per share.

In addition to the collapse in asset values, United has experienced in recent years a decline in income from its investments. As a result, United has virtually ceased to pay dividends on the 14,529,491 shares of its outstanding common stock. From 1933 to 1937 total dividends paid on the common stock amounted to 60 cents per share.[54] The last dividend on the common stock was declared in 1937 in the aggregate amount of $2,905,895, or 20 cents per share.

The decline in income has caused United considerable difficulty in meeting the dividend requirements on its preference stock. At December 31, 1941, there were outstanding 2,488,-712½ shares of preference stock and the annual dividends thereon amounted to $7,466,136. The dividend arrearages on the preferred stock as of March 31, 1942, totaled $9,332,670 or $3.75 per share.[55]

To facilitate payment of dividends on its preferred stock United underwent two accounting reorganizations, providing for the reduction of the stated value of its capital stock. On February 24, 1938, the stated value of the common stock was reduced from $5 to $1 per share, thus creating additional capital surplus in the amount of $58,117,966.[56] The second reorganization permitted by order of this Commission dated March 20, 1942,[57] provided for the reduction in the stated value of United's preferred stock

[54] In 1936 United paid common stock dividends aggregating $2,905,895 or 20 cents per share. Of this amount $102,112 was not paid out of current earnings but out of the earned surplus accumulated in prior years.

[55] As of the same date earned surplus per balance sheet was $7,884,626.

[56] Under Delaware law dividends may be paid under certain conditions out of capital surplus See Del. Corp. Law § 34. On the restatement of the carrying value of the portfolio as of June 30, 1938, there remained a balance of $13,110,060 in the capital surplus account. Without the prior reduction in the stated value of the common stock, the write-down in assets of $436,756,943 would have resulted in a capital surplus deficit of approximately $45,000,000. See note 53, *supra*, and text accompanying.

[57] See (1942) Holding Company Act Release No. 3391, 43 PUR(NS) 235.

from $50 to $5 per share. It appears that under Delaware law no dividends may be paid where the capital represented by the preferred stock exceeds the total value of the assets. At March 31, 1942, the stated value of United's preference stock amounted to $124,435,608, or $50 per share, whereas the market value of United's portfolio plus cash and government obligations were $62,941,363.[58] The management of United, therefore, refused to risk the declaration of a dividend on the preferred stock solely on the assumption that the actual value, in contrast to the market value, of the portfolio exceeded the stated value of the preferred stock. The reduction in the stated value of the preferred stock to $5 per share brought the aggregate stated value of the stock down to $12,443,560.[59]

Since the restatement of the portfolio assets as of June 30, 1938, United's net earnings available for dividends have not been sufficient to service the preferred stock. Net income for the last six months of 1938 was $2,379,808,[60] out of which United paid $1,866,521, the preferred stock dividend for the quarter ended June 30, 1938. At December 31, 1938, United therefore was in arrears on its preferred stock in the amount of $3,733,042, or $1.50 per share. Net earnings in excess of the preferred dividends for 1939 were used for payment of part of the 1938 arrearages. The balance of these arrearages in the amount of $2,203,167 was charged to capital surplus pursuant to our order and the conditions therein set forth.[61] This amount was restored to capital surplus out of 1940 earnings, with the result that net earnings for 1940 were less than the preferred stock requirements. United therefore paid only three quarterly dividends during 1940. The last quarterly dividend was paid in January 1941, but since earned surplus was not sufficient to meet the preferred dividend in full, United charged part thereof to capital surplus in accordance with our order.[62] No preferred dividends were paid during 1941 and the first quarter ended March 31, 1942. On the latter date, as already noted, the arrears on the preferred stock were in excess of the earned surplus.[63]

[58] Total assets per books as of the same date amounted to $162,224,426.

[59] Under our order permitting the reduction, the difference of $111,992,047 was to be set up in a special surplus account and was not to be subject to any charge whatever. A substantial part of the arrearages was paid subsequently.

[60] Dividends received in the amount of $2,166,641 had accrued and were declared prior to June 30, 1938, and upon receipt were transferred to capital surplus.

[61] United filed an application with this Commission pursuant to § 12(c) of the act, 15 USCA § 79*l*(c) and Rule U-12C-2 adopted thereunder, requesting permission to pay these arrearages by debiting its capital surplus account. Since preferred stock was United's senior security and there was sufficient cash available, we approved the application upon the condition that no dividend shall be paid on the common stock until the amount charged to capital surplus shall have been restored and that the preferred stockholders upon receipt of these arrearages shall be notified of their source and of the necessity of restoring that amount to the capital surplus account. Our order further provided that United may continue to charge payment of any regular quarterly dividend on its preferred stock to capital surplus until December 31, 1942, subject to the same conditions and upon the further condition that as a result of this operation the capital surplus shall not be reduced below the amount remaining immediately after charging thereto the amount authorized by the order. See Re The United Corp. (1939) SEC 318

[62] The quarterly dividend amounted to $1,866,522, while earned surplus was $1,786,396. The $80,126 charged against capital surplus was restored thereto later in the year.

[63] See note 55, *supra*, and text accompanying

Applicability of § 11(b)(2)

As already noted, 96.9 per cent of United's portfolio, per books at December 31, 1941, consisted of public utility securities. About 89.6 per cent of the portfolio assets consisted of common stock in UGI, Public Service, Niagara Hudson, and Columbia Gas, in each of which United owns in excess of 10 per cent of the outstanding voting securities. By reason of such ownership, United is a holding company within the meaning of § 2(a)(7)(A) of the act[64] with respect to each of the above companies, and it and its subsidiaries comprise a holding company system as defined in § 2(a)(9).[65] These statutory subsidiaries of United are themselves holding companies, directly or indirectly in control of over 100 operating companies, of which about 65 provide gas and electric services throughout the eastern part of the United States, particularly the commercial and industrial areas along the Atlantic Seaboard. On December 31, 1941, the aggregate assets of the holding company subsidiaries per books were approximately $2,828,320,000 and their aggregate operating revenues for 1941 were $476,020,881.

As a registered holding company, United is subject to the provisions of § 11(b), and we are accordingly under duty in this consolidated proceeding to determine in what respect, if any, United offends § 11(b)(2).[66]

A. Undue and Unnecessary Complexity

(a) Effect of United's corporate existence.

[1, 2] The record shows, and United concedes, that it does not provide for its four subholding-company systems any engineering, construction, financial or other services which holding companies might provide for their subsidiaries, and indeed United has neither the personnel nor the facilities to render such services. United contributes nothing to the normal functioning of the system companies and is therefore economically unnecessary to their

[64] This section defines a holding company as "any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company or of a company which is a holding company by virtue of this clause. . . ."

Where a company owns less than 10 per cent of the outstanding voting securities it may be a holding company under subsection (B). This subsection defines a holding company as "any person which the Commission determines, after notice and opportunity for hearing, directly or indirectly to exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon holding companies."

[65] This section defines a holding company system as " . . . any holding company, together with all its subsidiary companies. . . ."

[66] Section 11(b) directs this Commission, "as soon as practicable after January 1, 1938:

. . .

"(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph, the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company."

operations. United thus needlessly extends the corporate pyramid in the holding company system of which it is a part, and we find, accordingly, that its continued existence unduly and unnecessarily complicates its holding company system within the very terms of § 11(b)(2).[67]

The corporate existence of United also extends the holding company pyramid beyond the degree permitted by the second sentence of § 11(b)(2), commonly known as the "great-grandfather" clause. That clause prohibits the existence of more than two tiers of holding companies in any holding company system. Yet, at December 31, 1941, we find 18 instances in which there were three holding companies superimposed upon operating utility companies in the system, with United as the top holding company, and in 5 other instances, the number of tiers was in excess of that number.[68] We are, therefore, required under the express mandate of the "great-grandfather" clause to direct United to take such action as we deem necessary to reduce the holding-company system to the permissible number of tiers.

For the unnecessary corporate existence of United and the complexities resulting therefrom the stockholders of United have paid a price. When dividends on its common stock portfolio are received by United, a part thereof must be allocated to meet operating costs and taxes. These costs for the most part consist of salaries, legal and auditing fees, and other administrative expenses, all of which together with taxes have amounted to $10,099,785 from the date of organization of United through March 31, 1942, or an average of $762,248 per year. This yearly average amount represents over 10 per cent of the annual dividend requirements on the preferred stock, and constitutes the price paid by United's stockholders for the collection of dividends, which without the interposition of United would have reached them directly at no additional cost.[69]

(b) Effect of United's corporate structure.

[3] A further complexity in the system stems from the corporate structure of United, which consists of preferred and common stock. As we have seen, the principal part of United's portfolio consists of investments in the common stock of its holding company subsidiaries. These subsidiaries derive their income chiefly from the operating companies in the system, either directly or in some cases through one or more intermediate holding companies. There are thus at least two tiers of holding companies, and in some cases as many as three or four tiers, between the stockholders of United and the operating companies at the base of the system. Before any part of the system earnings can reach

[67] Re Electric Bond & Share Co. (American Power & Light Co. and Electric Power & Light Corp.) (1942) Holding Company Act Release No. 3750, 46 PUR(NS) 321; Re International Utilities Corp. (1943) Holding Company Act Release No. 4270; Todd v. Securities and Exchange Commission (1943) 137 F(2d) 475.

For chart showing holding company system see Appendix A-1, *infra*.

[68] See Appendix A-2, *infra*. The distribution by UGI of its holdings in Philadelphia Electric and Public Service eliminated a considerable number, but not all, of the "great-grandfather" situations.

[69] For expenses and taxes since 1937 see Appendix D-1, *infra*.

United's stockholders, deductions must be made at each level in the pyramid to provide for operating costs, taxes, and the requirements of all publicly held senior and equity securities, both for the operating companies and each holding company. What remains thereafter is the chief source of income for the preferred and common stock of United.

The preferred stock of United, consisting of 2,488,712 shares with an annual cumulative dividend requirement of $7,466,136, is manifestly inappropriate at the topmost level in the corporate pyramid. United's ability to pay its preferred dividends rests largely upon earnings derived from investments in the common stock of its subholding companies, and its preferred stock necessarily partakes of the speculative and leverage features of these investments.[70] Indeed, the preferred stockholders of United may often be at a greater disadvantage than the common stockholders of the subholding companies, since the corporate existence of United creates prior claims for operating costs and taxes, and gives rise to legal limitations with respect to dividends prescribed by Delaware law under which United is incorporated. Since 1938 it has become increasingly difficult for United to pay its preferred dividends. To facilitate their payment, United underwent two accounting reorganizations, reducing the stated value of its preferred and common stock; and on two ocasions dividends were paid by a charge to capital surplus (i.e. capital). Total net earnings from 1938 through March 31, 1942, have not been sufficient to service the preferred stock. On the latter date preferred stock arrearages amounted to approximately $9,332,000 while earned surplus was only about $7,884,000.

The common stock of United, being junior in rank to the preferred stock, is in even a more precarious position with respect to the assets and earnings of United. This is further illustrated by the decline in the market value of United's portfolio assets, which on March 31, 1942, amounted to $49,131,876.[71] On the basis of the latter figure, total assets, after deducting current liabilities, were $63,092,460, or $70,675,818 less than the liquidating value of the preferred stock plus arrearages.[72]

The earnings record of United with respect to its common stock portrays an equally bleak picture. As we shall see, the total net earnings during 1933–1937 attributable to the common stock amounted to approximately 90 cents per share, of which the common stock received 20 cents per share each in 1933, 1936, and 1937. Since then, as already noted, United's earnings available for dividends have not been sufficient to meet the preferred dividends.

From the foregoing it is evident that the preferred stock is not appropriate to the capital structure of United, that its existence produces additional leverage in the system, and that

[70] Sen. Rep. No. 621 on S. 2796, 74th Cong. 1st Sess. p. 59; Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 5423, p. 212. See also Re The Commonwealth & Southern Corp. (1942) Holding Company Act Release No. 3432, 44 PUR(NS) 217.

[71] For market values of United's portfolio in prior years, see notes, 50, 53, *supra*.

[72] The extreme leverage character of United's common stock is also indicated in the wide fluctuations, and in the steady decline, in its market value since 1929. See Appendix C–2, *infra*.

the system and nonsystem earnings cannot support United's two classes of stock. We conclude, therefore, that United's corporate structure is repugnant to the standards of § 11(b)(2) in that it unduly and unnecessarily complicates the holding company system of which United is presently a part.[73]

B. Distribution of Voting Power

(a) As between United's common stock and system securities generally.

[4] United's outstanding securities on March 31, 1942, consisted of 14,529,491½ shares of common stock and 2,488,712⅛ shares of preferred stock, all entitled to one vote per share. The common stock thus holds a little over 85 per cent of the voting power and is consequently in control of United, and, through United, of the system companies. We find such voting control by United's common stock of the entire system unfair and inequitable and consequently in violation of § 11(b)(2).

The combined consolidated book assets, as adjusted, of UGI, Public Service, Niagara Hudson and Columbia Gas at December 31, 1941, amounted to $2,753,786,879.[74] Common stock capital and surplus of United as of the same date amounted to $36,452,193 on the books of United, and would have equaled $28,986,057 if account were taken of preferred dividend arrearages.[75] On the basis of the latter figure, $1 of the book value of the common stock of United represented control of about $95 in the combined assets of the subsidiary systems. If we make a further adjustment to substitute for the value of United's investment on its own books the value at which those securities were carried on the books of its subsidiaries, United's common stock equity would amount to $51,968,797. Even on this basis $1 of such common stock equity controlled about $54 in the book assets of the subsidiary system companies.

The record shows further that the common stock has little claim to the system earnings and that such claim is small in amount in relation to the combined consolidated operating revenues plus other income of the entire system and to the combined consolidated system gross income.[76] Net income applicable to United's common stock varied from a high of 1.197 per cent of gross revenues in 1937 to a low of 0.377 per cent in 1941. In relation to system gross income, net income applicable to United's common was largest in 1937 (3.867 per cent) and lowest in 1941 (1.399 per cent). In short, the common stock of United controls the entire system of United, although the combined book assets of the subsidiary systems are respectively about 95 and 54 times the equity of the common stocks per books of United and as adjusted, and although its claim to earnings are but a small fraction of the system earnings and revenues. We

[73] See Re The Commonwealth & Southern Corp. *supra*, footnote 70.

[74] The combined consolidated assets of the four subsidiaries per books amounted to $2,828,319,479, from which was deducted the sum of $74,532,600, representing the carrying value of UGI's holdings in Public Service and Niagara Hudson on the books of UGI.

[75] In applying the standards of § 11(b)(2), the carrying value of nonsystem assets is of course irrelevant. Their amount nevertheless has been added to system assets since it does not affect the conclusion and since it simplified calculation.

[76] See Appendix E, *infra*.

find such concentration of voting power in the common stock unfair and inequitable, contrary to the standards of § 11(b)(2) of the act.[77]

(b) As between United's common and preferred stock.

[5] As previously noted, United's common stockholders have about 85 per cent voting control of United against 15 per cent held by the preferred stockholders. We find that such distribution of voting power between the two classes of stock is unfair and inequitable.

United's income has declined considerably from 1938 through March 31, 1942, and as a result, United has not paid any dividends on its common stock.[78] The reported net earnings of United from 1938 through March 31, 1942, and the amounts applicable to the two classes of stock were as follows:

Year	Reported Net Earnings	Percentage Applicable to Preferred	Common
1938	$6,417,442	116.34	(16.34)
1939	8,482,675	88.02	11.98
1940	9,557,142	78.12	21.88
1941	6,811,213	109.62	(9.62)
1942[79] (to 3–31)	1,185,528	157.44	(57.44)

( ) denotes deficit.

It is clear from the above table that United's reported net earnings for 1938, 1941, and the first quarter of 1942 were not sufficient to meet the preferred stock dividend requirements,[80] while the reported net earnings for 1939 and 1940 were in excess thereof. Substantially all of that excess amount was unavailable for the common stock in view of the accrued arrearages. Thus, the total of reported net earnings from January 1, 1938, through March 31, 1942, amounted to $32,454,002 and of this amount $31,731,080 or 97.77 per cent was applicable to the preferred stock and only 2.23 per cent to the common.[81] In con-

[77] Cf. Section 1(b)(3) of the act which states that one of the abuses to be eliminated in the application of the act is the exercise of control "through disproportionately small investment."

[78] During 1933–1937 the stockholders received 60 cents per share, 20 cents each in 1933, 1936, and 1937 and could have received approximately only 30 cents more if all net earnings during that 5-year period had been distributed.

[79] According to reports filed by United subsequent to the closing of the record, net earnings for 1942 were $3,553,145. Arrearages on the preferred stock at December 31, 1942, were $7,466,136 or $3 per share, while earned surplus as of that date was $2,786,146.

[80] The requirements for the four and one-quarter years were $7,466,136 per year.

[81] If an adjustment is made to include as part of the net earnings the $2,166,641 United received as dividends from the statutory subsidiaries subsequent to the write-down of assets as of June 30, 1938, and carried to capital surplus, 91.87 per cent of the adjusted net earnings would have been applicable to the preferred stock and 8.13 per cent to the common.

None of the reported net earnings for the four and one-quarter years were available for the common stock, since the accounting reorganization as of June 30, 1938, resulted, inter alia in the elimination in the first half of 1938, of $2,171,113 of earned surplus, which otherwise would have been available for dividends, and the accumulation of preferred arrearages in the amount of $1,866,521. If we take these additional factors into consideration the total net earnings available for dividends during the four and one-quarter years approximately amounted to $30,282,880, whereas the preferred stock dividend requirements were $31,731,080.

trast the common stock has enjoyed a little over 85 per cent of the voting power, while the preferred stock, with a claim substantially to all of the earnings during that period held only 15 per cent thereof. The voting control exercised by the common stock of United is wholly out of proportion to its claim to earnings and therefore unfair and inequitable in the light of the standards of § 11(b)(2).

The inequitable distribution of voting power is further apparent from the relative position of the preferred and common stock in the capitalization of United. At December 31, 1941, the capital structure of United was as follows:

	Shares Outstanding	Per Balance Sheet Amount	%
Preference stock, no par, $3 cumulative, liquidating value, $50 per share (redemption price $55)	2,488,712½	$124,435,608.34	77.34
Common stock, no par [82] stated value $1 per share	14,529,491½	14,529,491.50	9.03
Capital Surplus		15,223,603.82	9.46
Earned Surplus		6,699,097.63	4.17
		$160,887,801.29	100.00

Dividends in arrears on the preferred stock then amounted to $7,466,136 or $3 per share. Accordingly, the liquidating claim of the preferred stock in the amount of $131,901,744 represented 81.98 per cent of the total capitalization and surplus and resulted in an earned surplus deficit. Thus the preferred stock with a claim to about 82 per cent of the capitalization and surplus had only 15 per cent of the voting control.

We make no finding at this time with respect to the value of United's assets and the relative rights of United's preferred and common stock to such assets. Our foregoing discussion has been limited solely to the question of determining whether voting power is fairly and equitably distributed under the standards of § 11(b)(2) and valuation of assets is not necessary for that purpose.[83]

United's Plan under § 11(e)

[6] In an attempt to meet the requirements of the act United filed on March 4, 1941, a plan under § 11(e). The terms of the plan are by no means clear. The statements it contains are

[82] Option warrants outstanding at December 31, 1941, entitle the holders to purchase 3,732,059 shares of United's common stock at $27.50 per share.

[83] See The Commonwealth & Southern Corp. v. Securities and Exchange Commission (1943) 134 F(2d) 747, 48 PUR(NS) 72.

The question regarding the relevance of evidence on the value of United's assets and its subsidiaries was before us at an earlier stage in this proceeding. See (1941) Holding Company Act Release No. 3181, 41 PUR (NS) 302. At that time we held that such evidence is material to the broad issues raised under § 11(b)(2). It will be noted that our notice and order for hearing alleged that "the preference stock represents a claim upon all or a substantial portion of the company's assets" and it seemed likely that a precise determination of the respective claims of the preferred and common stocks would be necessary. See (1941) Holding Co. Act Release No. 2907, p. 11 Our determination with respect to the question of value evidence was prompted by the issues as raised in our notice and order for hearing. However, we make no determination at this time with respect to this issue and we therefore consider value evidence as to United's assets not relevant at this stage.

Such evidence will become material in the event of a recapitalization of United or the distribution of part or all of its assets among its preferred and common stockholders. At that time we will consider evidence heretofore adduced by United on the question of value and any other evidence which might be presented at that time.

in some instances at variance with the testimony of United's officers and the statements of its counsel as to the purposes of the plan. We have considered the plan on the assumption that it means what United's officers and counsel have stated it to mean.

The object of the plan is stated to be the "divestment of control" of its subsidiaries. United proposes to reduce its holdings in UGI, Public Service, Niagara Hudson and Columbia Gas to less than 10 per cent of the outstanding voting securities of each of these companies, by sale, exchange, or other disposition when such reduction may be advantageous in the opinion of its board of directors. Pending such dispositions, United will not vote any of its stockholdings in its four subsidiaries save with the express "permission" of this Commission.[84] If approved by us, the plan will be submitted to the stockholders. As originally filed, the plan was conditioned upon approval by a majority of the preferred and common stockholders voting as one class, but in the course of the hearing the President of United stated that he and, in his opinion, the management, would agree to an amendment requiring approval by a majority vote of each class of stockholders. Should the plan obtain the approval of stockholders and of this Commission, United will file an application under § 5(d) of the act for an order terminating its registration as a holding company[85] and will register as an investment company under the Investment Company Act of 1940.

The reduction by United of its holdings to less than 10 per cent of the voting stock of each subsidiary constitutes, as the President of United has testified, "the heart of the plan." The provision in the plan for suspending or "sterlizing" the right of United to vote the stock in its subsidiaries is incidental and temporary only. United does not know at this time when its reduction program will be completed and in its opinion the suspension of voting power is an appropriate device for insulating the subsidiaries against any "possible control meanwhile."[86]

[84] United also proposes not to have any interlocking directorates between it and its subsidiaries. The elimination of interlocking directorates was begun as early as 1934–1935 and was virtually completed when this application was filed.

The plan also provides that United will not undertake or engage in any transaction with its subsidiaries or participate in the underwriting of any securities issued by them. It is not clear whether this phase of the plan is to be effective only pending the reduction in holdings to less than 10 per cent or is to continue as long as United holds any shares in its subsidiaries.

[85] This section provides that

"Whenever the Commission, upon application, finds that a registered holding company has ceased to be a holding company, it shall so declare by order and upon the taking effect of such order the registration of such company shall, upon such terms and conditions as the Commission finds and in such order prescribes as necessary for the protection of investors, cease to be in effect."

[86] This has also been stated in the brief of counsel for United (pp. 20–21):

"At the outset it is necessary to take issue with the view that this plan is principally for the 'sterilization' of voting rights. The so-called 'sterilization' features of the plan are incidental to the basic undertaking to reduce the percentages of voting securities of the statutory subsidiaries held by the respondent below the ten per cent level as set forth in Item 4 of the plan. Mr. Howard, president of the corporation, testified that this provision constitutes the 'heart of the plan' and the expression of a policy of the corporation established several years ago.

"Because of the uncertainty of conditions under which the securities might be disposed of without loss, the further provisions of the plan for the renunciation of voting rights and the abstention from other transactions with the statutory subsidiaries are included to obviate any question of possible control meanwhile."

As soon as United's holdings are reduced to less than 10 per cent of the voting stock in any subsidiary, United intends to resume voting the securities it will then hold in that subsidiary.

United's stated intention to comply with § 11(b) by reducing its holding in its statutory subsidiaries first came to our notice in the latter part of 1938. On August 3, 1938, Mr. Justice Douglas, then chairman of this Commission, addressed a letter to registered public utility holding companies, requesting their suggestions and intentions with respect to compliance with §§ 11(b)(1) and 11(b)(2) of the act. On November 15, 1938, United stated in reply what it has reiterated throughout this proceeding: United and its subsidiaries do not in any realistic sense constitute a holding company system; it is not a typical holding company, since it does not render any of the services which holding companies normally perform for their subsidiaries; it functions primarily as an "investment company"; it does not exercise control over UGI, Public Service, Niagara Hudson, and Columbia Gas; its present technical status as a holding company stems solely from the fact that it owns in excess of 10 per cent of the outstanding voting securities of these companies; and in order to cease to be a holding company within the act United need only reduce the stock it now holds in its subsidiaries to less than 10 per cent.[87] The letter of November 15th concluded as follows:

"It is our intention to proceed with this program and diversification as rapidly as is practicable, and we believe that under favorable market conditions it will be possible by sales, exchanges, or otherwise to reduce the corporation's holdings of public utility voting securities to below 10 per cent of those of any one company."

Since 1938 United has disposed of only 17,900 shares of Niagara Hudson and 13,500 shares of Columbia Gas. This represents a very small fraction of the amount which must be disposed of in order to reach less than 10 per cent. At the date the record was closed United held 26.1 per cent of the voting stock of UGI, 13.9 per cent of Public Service,[88] 23.2 per cent of Niagara Hudson and 19.6 per cent of Columbia Gas.

United's 11(e) plan offers nothing which will assure the expeditious disposition of its holdings in its subsidiaries. The plan merely reiterates United's intention to carry out the re-

[87] Despite these repeated claims United has at no time availed itself of the statutory machinery provided for in § 2(a)(7) pursuant to which a holding company may file an application to be declared not a holding company within the act, notwithstanding the ownership of 10 per cent or more of the voting securities. Indeed, had United filed such an application and succeeded in showing that the four statutory subsidiaries are not subject to its control or controlling influence, United would have been able to keep all of its present holdings without disposing of any part thereof.

We note also that Public Service did file an application under § 2(a)(8) to be declared not a subsidiary of United and UGI. We denied the application on the ground that Public Service failed to show that it was not subject to the control or controlling influence of United and U.G.I. See (1941) Holding Company Act Release No. 2998, 10 SEC —, aff'd. (1942) 129 F(2d) 899, 45 PUR(NS) 350, cert. den. (1942) 317 US 691, 87 L ed —, 63 S Ct 266.

Applications under § 2(a)(8) were also filed by Niagara Hudson and Columbia Gas for declarations that they were not subsidiaries of United but these applications were withdrawn.

[88] Under the 11(e) plan of UGI, United increased its holdings in Public Service to 21 per cent of the total voting securities outstanding. See Note 95, *infra*.

duction program set forth in its letter of November 15, 1938.

United claims that its plan is an appropriate means of complying with § 11(b) of the act. Section 11(e) provides that any registered holding company may "submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company . . . for the purpose of enabling such company . . . to comply with the provisions of subsection (b)." This section further provides that we shall approve such plan, as submitted or modified, if we find it necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected thereby.[89] United has urged before us that its proposed reduction program is a plan "for the divestment of control" within the express terms of § 11(e) and that we must approve the plan, since it will achieve compliance with § 11(b) and its terms are fair and equitable. We also have been referred by counsel for United to portions of the legislative history of the act, all of which are claimed to indicate that in order to comply with § 11 (b) United may cease to be a holding company through transformation into an "investment trust" or an "investment company."

In general we recognize the possibility that a holding company may comply with the statute by transforming itself into an "investment company." The question before us is whether United's plan in fact presents an appropriate method of transformation. We have found that United as a corporate entity is economically unnecessary for the proper functioning of its subholding company systems. The continued corporate existence of United therefore constitutes an undue and unnecessary complexity in its holding company system under § 11 (b)(2) and we are under a statutory duty to direct removal of that complexity. United has proposed a plan which, it is claimed, will achieve that result by having United cease to be a holding company. Unless we can affirmatively find that the plan will have that effect we cannot, by the very terms of § 11(e), approve the plan.

It is evident of course that ownership of 10 per cent or more of the voting stock is not a necessary prerequisite to being a holding company within the act, and the mere reduction to less than 10 per cent will not necessarily transform United into an "investment company." The parent-subsidiary relationship is based upon the power to control or to wield a controlling influence by the parent company. The reference to ownership of 10 per cent or more of the voting securities in §§ 2 (a)(7)(A) and 2(a)(8)(A) is

[89] This section provides:
"In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of § 18, to enforce and carry out the terms and provisions of such plan."

merely a legislative declaration that ownership of 10 per cent or more of the voting securities is likely to carry with it practical working control. Sections 2(a)(7)(B) and 2(a)(8)(B) make it equally clear, however, that ownership of less than 10 per cent does not in itself resolve the parent-subsidiary question. The existence of control or controlling influence is frequently the result of complex and subtle intercorporate relationships,[90] and may continue to persist regardless of the amount of voting stock held. Accordingly, we cannot approve United's 11(e) plan unless we can determine now that when in the future United's holdings in its statutory subsidiaries reach less than 10 per cent of the voting stock, these subsidiaries will not remain subject to United's control or controlling influence.

Whether such will be the effect of United's plan is question of fact, and the answer to this question will depend upon the relationship of United to those companies at that time.[91] It is apparent that a long period of time will elapse before the reduction program is completed. What all the relevant facts will then be neither United nor we are in any position to know. A determination by us of this question at this time obviously must be based upon facts not yet in existence, and therefore hypothetical and uncertain.

The foregoing analysis demonstrates the inherent infirmities of United's plan and we would be inclined, therefore, to reject it without further consideration. We have estimated, however, in so far as the record has permitted, United's position with respect to its subsidiaries in the event of a reduction of its holdings below 10 per cent. This estimate indicates no basis for assuming that such reduction in ownership will ensure that United will cease to be a holding company with respect to its present subsidiaries, and also demonstrates that the existence of control or controlling influence would require exhaustive consideration by us at that time.

The 11(e) plan gives no indication of the percentage of voting securities United intends to retain in each of its four statutory subsidiaries. The plan goes no further than to provide that United will reduce its present holdings to less than 10 per cent of the voting securities in each subsidiary. When specifically questioned on the matter,

[90] Thus, the House Committee Report No. 1318 on S. 2796, 74th Cong. 1st Sess. states as follows: (p. 9):

"Holding Company" (7) is defined in two parts: (A) In terms of owning or controlling, directly or indirectly, 10 per cent or more of the voting securities of a utility (gas or electric) company or another holding company, or of holding such securities with power to vote; and (B) in terms of "exercising a controlling influence" over the management of policies of a utility company. Under the flexible definition in (B), no company is to be deemed a holding company or have any duty as such until the Commission so finds after notice and opportunity for hearing. The flexibility here provided is necessary in order that Title I can meet the varied and subtle forms which corporate interrelationships have in the past and will in the future take.

[91] The question presented by the plan is "whether or not there is control or susceptibility to controlling influences *in fact*, and does not merely relate to the percentage of securities held. It has frequently been a most troublesome question, necessitating the most thorough exploration of historical and potential relationships between the companies involved." Re Engineers Pub. Service Co. (1941) Holding Company Act Release No. 2897, 9 SEC 764, 40 PUR(NS) 1. See also American Gas & E. Co. v. Securities and Exchange Commission (1943) — US App DC —, 134 F(2d) 633, 642, 49 PUR(NS) 150, cert. denied (1943) — US —, 87 L ed —, 63 S Ct 1318.

the President of United gave the same inconclusive answer. If United so chooses, it may under the plan retain as low as 2 per cent or 3 per cent, or as high as 9 per cent, and perhaps even 9.9 per cent. This wide choice is fully consistent with the now familiar contention United has advanced in support of its plan: that its sole link to the act and our jurisdiction thereunder is United's ownership of over 10 per cent of the voting stock of each subsidiary and that a reduction to less than 10 per cent is all that is necessary to meet the requirements of § 11(b).

It should be emphasized at this juncture that we are not concerned here with a newcomer seeking to buy into several utility enterprises. The problem before us would then be at what point in the process of acquisition control and its statutory consequences would come into being. The problem presently before us is entirely different. For many years now the subsidiary companies in the United system have been subject to the latter's control or controlling influence. United is now attempting to divest itself of any "possibility of control" and to this end has filed a plan with us for the reduction of its holdings in its subsidiaries to less than 10 per cent. Pending such reduction, United would not vote the securities it now holds in its subsidiaries, but thereafter would resume the right to vote the securities retained. The voting power thus retained, we believe, might leave United, not a mere stockholder holding less than 10 per cent of the voting stock, but in a position of considerable authority. The voting stock of UGI, Columbia Gas, Public Service and Niagara Hudson is widely held and distributed in small amounts, and United even with less than 10 per cent of the voting stock would easily remain by far the single largest stockholder in each subsidiary. Indeed, in some cases, United might even exceed the amount of voting stock held by the next ten largest stockholders or more, and in addition there is no indication in the record that the other stockholders would act together in opposition to United. It is not unlikely that the momentum and habits of control, authority and influence which United has acquired in the years past would be carried forward into the future, no matter what amount of voting stock United might retain under the plan.[92]

As of January 31 and January 20, 1942, respectively, there was no stockholder besides United who held 2 per cent of the voting stock in UGI or even 1 per cent in Columbia Gas. The second largest stockholder of UGI held 1.92 per cent of the voting stock, and the 19 largest stockholders other than United held 1,536,390 shares of the common stock, representing 6.63 per cent of voting power. The second largest stockholder in Columbia Gas owns directly and beneficially about 0.81 per cent of the total voting securities. He is Philip G. Gossler, former President of Columbia Gas and now chairman of the board of directors, a director of United from 1930 to 1934, and the joint author of a circular addressed in 1930 to the stockholders of Columbia Gas advising them to exchange their holdings in the company for the capital stock

[92] See American Gas & E. Co. v. Securities and Exchange Commission, *supra*, footnote 91. See also Note 109, *infra*.

of United.[93] The eighteen largest stockholders following hold in the aggregate about 8.6 per cent of the outstanding voting securities. None of the nineteen stockholders of UGI and the eighteen of Columbia Gas appear to have any representatives on the board of their respective companies, and in general their voting power is subject to considerable fluctuation from year to year, since a considerable amount of the stock held by them is in brokerage and trust accounts for a large number of clients and trust beneficiaries. Thus, United, even by retaining less than 10 per cent of the voting stock in both companies, could easily remain the dominant stockholder in each.

At the time the record was closed United held 13.9 per cent of the voting securities of Public Service, and was its second largest stockholder. The largest stockholder was UGI, holding 28.5 per cent of the voting stock. We take notice, however, of the fact that on March 18, 1943, after the closing of the record in this proceeding, we issued an order approving a plan filed by UGI under § 11(e) of the act, pursuant to which UGI disposed of the 2,017,490 shares of the common stock of Public Service previously held in its portfolio.[94] Substantially all of this stock was distributed among the common stockholders of UGI, and as its share United received 505,518 shares of Public Service common.[95] United thereby increased its interest in the latter company from 13.9 per cent to 21 per cent of the outstanding voting securities. The elimination of UGI as a stockholder in Public Service and the reduction by United of its interest in the latter company to less than 10 per cent may nevertheless leave United in a position to exert considerable influence upon Public Service. The voting stock of Public Service is widely distributed and greater diffusion will result from the distribution by UGI; and at the present time there are no stockholders other than United who hold 10 per cent or more of the outstanding voting securities, and there is no indication in the record that the other stockholders will act together.[96]

There is another feature of the UGI plan which should be considered in this connection. UGI also distributed its holdings in Philadelphia Electric Company, hitherto its largest subsidiary and its chief source of income. UGI owned about 97 per cent of the common stock of Philadelphia Electric and distributed virtually all of that amount to its preferred and common stockholders. Philadelphia Electric, in accordance with a plan filed by it and approved by us in the same proceeding, reclassified its no par common stock into $1 dividend preference common stock and new common stock without nominal or par value, both classes of stock having one vote per share.[97] For its share of Philadelphia Electric common UGI received 2,304,-

[93] See Note 41, *supra*.

[94] Re The United Gas Improv. Co. (1943) Holding Company Act Release No. 4173, 47 PUR(NS) 289; id. (1943) Holding Company Act Release No. 4179; id. (1943) Holding Company Act Release No. 4205.

[95] Each common stockholder of UGI received one-twelfth of a share of Public Service common.

[96] Although not in this record, other sources show that the next 30 largest stockholders together hold about 8.85 per cent of the voting securities of Public Service. See Public Service Corp. of New Jersey v. Securities and Exchange Commission (1942) 129 F(2d) 899, 902, 45 PUR(NS) 350.

[97] The authorized no-par common stock of Philadelphia Electric amounted to 15,000,000

958.95 shares of preference common and 7,939,303.05 shares of the new common of Philadelphia Electric. The preference common of Philadelphia Electric was distributed by UGI in retirement of its preferred stock.[98] The common stock of UGI received one-third of a share of the new common stock of Philadelphia Electric, and as its allotment in the distribution, United received 2,022,074 shares of the new common stock, or 19.2 per cent of the new voting securities of Philadelphia Electric. Philadelphia Electric thus became a direct statutory subsidiary of United.

Since the new voting stock of Philadelphia Electric was prorated among the present preferred and common stockholders of UGI, the Philadelphia Electric stock is widely scattered and held in small amounts. Under the plan the largest stockholder after United holds 299,453 shares of the new voting stock of Philadelphia Electric, representing about 2.84 per cent of the total voting securities outstanding. The ten largest stockholders other than United hold 8.3 per cent of the total voting stock, and there is nothing in the record to show that they will act in concert.[99] Finally, as in the case of UGI, substantially all of the stock held by these ten large stockholders is in brokerage and trust accounts for very many clients and trust beneficiaries.

At present United holds 2,333,107 shares of the common stock of Niagara Hudson. This amounts to 24.3 per cent of the common stock outstanding and 23.2 per cent of the total voting securities.[100] Niagara Hudson's second largest stockholder is UGI holding 8.7 per cent of the voting stock. The third largest stockholder as of March 6, 1942, held less than 5 per cent. The voting stock of Niagara Hudson is widely held, though not as diffused as in the case of United's other subsidiaries. As of March 6, 1942, the eight next stockholders after United and UGI held about 18.8 per cent of the outstanding voting securities but there is no indication of any likelihood of concerted action in opposition to United. Thus, United may, under its reduction program, be the largest stockholder in Niagara Hudson and should it choose to retain 9.9 per cent—as its plan would permit—United and UGI jointly would hold 18.6 per cent of the total voting securities.

shares. This stock was reclassified into 2,369,076 shares of $1 preference common stock and 12,630,924 shares of new common. Immediately upon the consummation of the plan there were 2,369,076 shares of preference common and 8,160,154 of the new common, or a total of 10,529,230 shares of voting stock. This total was issued by Philadelphia Electric in exchange for its presently outstanding 10,529,230 common stock.

[98] The distribution was on the basis of three shares of new preference common for every share of UGI preferred, in addition to a specified amount of cash. After the distribution UGI had left 9,520.95 shares of preference common and 168,633.05 shares of the new common stock of Philadelphia Electric. UGI intends to dispose of these shares.

[99] The estimated holdings of the ten largest stockholders in Philadelphia Electric, other than United, is computed from the amounts of preferred and common stock of UGI held by the twenty largest stockholders of each class as of January 31, 1942.

[100] The voting securities of Niagara Hudson outstanding as of March 31, 1942, are:

Issue	No. of Shares
First preferred	378,875
Second preferred, series A	90,281
Second preferred, series B	15,649
Common stock	9,581,008
Total	10,065,813

In June, 1943, Niagara Hudson and its subsidiaries have filed a plan under § 11(e) of the act, which, if approved by us, will have the effect of reducing United's holdings in Niagara Hudson below 10 per cent.[101] In general this plan provides for the ultimate dissolution of Niagara Hudson and its holding company subsidiary, Buffalo, Niagara and Eastern Power Corporation and for the consolidation of the four direct operating subsidiaries of the latter company and two other utility subsidiaries of Niagara Hudson into a single operating company under the name of The Niagara Hudson Company, Inc. If the plan is consummated this new operating utility company will have outstanding 4,867,716 shares of common stock and 955,171 shares of 5 per cent preferred stock, all to have one vote per share. For its 2,333,107 shares of common stock of Niagara Hudson, United will receive 466,621 shares of the common stock of the new operating company or a total of 8.01 per cent of voting securities to be outstanding.[102] For its share of preferred and common UGI will receive 2.12 per cent of the outstanding preferred and 10.46 per cent of the new common or 9.09 per cent of the total voting securities. Thus, United and UGI together will hold 17.1 per cent of the voting stock, and jointly will be in a position of considerable importance in the new Niagara Hudson Company. Furthermore, even if we consider only United's 8.01 per cent interest, it is evident that United may wield considerable influence in the new Niagara Hudson system. The third largest stockholder will hold about 1.7 per cent of the voting stock in the new company and the next eight largest stockholders excluding UGI will hold in the aggregate about 8 per cent.[103]

The voting power of United retainable under the plan must be considered not only against the voting stock outstanding but also against the stock voted at the annual meetings of the various subsidiaries. Where the stockholders are many and the voting stock is held in small amounts, it is inevitable that all of the voting stock will not be represented at stockholders' meetings, either personally or by proxy, and this invariably strengthens the voting power of one or more of the larger stockholders. The record shows that at each annual meeting from 1932 or 1933 through 1941 the shares voted were on the average only about 68.3 per cent of the total voting stock of UGI, 72.5 per cent of Public Service, 74.8 per cent of Niagara Hudson, and 68.5 per cent of Columbia Gas. Hence, should United retain under the 11(e) plan 9 per cent of the voting stock in its subsidiaries, it would represent at the annual meeting of each of the above companies respectively 13.1 per cent, 12.4 per cent, 11.8 per cent and 13.4 per cent of the total securities voted. These percentages of course represent minimum estimates, since they are based upon

[101] See (1943) Holding Company Act Release No. 4387.

[102] The plan also provides for the consolidation of two nonutility companies into a single company to be known as the Northern Development Corporation. This nonutility company will have only common stock and United will receive 24.35 per cent of the new common and UGI 7.9 per cent.

[103] These estimates are computed from the amounts of preferred and common stock of Niagara Hudson held by the ten largest stockholders of each class as of March 6, 1942.

the assumption that all the securities to be disposed of by United under the plan would actually continue to be voted, no matter how widely scattered.[104]

The subsidiary systems in which United intends under the plan to retain substantial investments as well as the other utility companies in which United, either alone or jointly, has considerable interests, service for the most part the industrial and commercial areas along the Atlantic Seaboard and adjoining states, and enjoy, according to a spokesman of Morgan-Drexel, a certain "community of interest." As already noted, Philadelphia Electric, hitherto part of the UGI system, interchange electric energy with Public Service and with Pennsylvania Power & Light Co., a nonaffiliated company. The electric transmission system of Niagara Hudson is interconnected with the transmission lines of certain nonassociated companies, including those of Rochester Gas & Electric Corporation, New York State Electric and Gas Corporation, The Hydro-Electric Power Commission of Ontario, and the Consolidated Edison Company of New York. At the present time United and Niagara Hudson each own in the last-named company 1.5 per cent of the voting stock.[105] We note further that United, UGI, and Columbia Gas each own 2.7 per cent of the voting stock of American Water Works and Electric Company. United also owns 5.1 per cent of the voting stock in Commonwealth & Southern, UGI owns 2.9 per cent and American Superpower 9.3 per cent, or a total of 17.3 per cent. In short, United will not, under its plan, be reduced to a diminutive shareholder in several utility enterprises. United will remain by far the largest single stockholder in its present subsidiary systems, with voting power in some cases greater than that held by the next ten, and even nineteen, largest stockholders; and, either alone or jointly, will continue to hold large investments in several nonassociate systems. In general United will occupy a preëminent position in some of the major utility systems along the Atlantic Seaboard and adjoining states, and the possible consequences of such concentrated voting control in a compact group of utility systems cannot now be anticipated.

In estimating the future position of United with respect to its subsidiaries, we must also consider the purposes for which United was organized and the close and harmonious relationships which have existed between United and its subsidiaries. It will be recalled that United was not created by the Morgan-Drexel and Bonbright interests to serve as an "investment company" with respect to the utility systems in which United has acquired substantial minority interest. Control was the central motive which prompted the formation of United, for, as we have seen, it was designed to ensure the organizers of financial control over the utilities lo-

[104] For the percentages of the stock voted at the annual meeting of the subsidiaries by United and the public stockholders, see Appendix F, *infra*.

[105] American Superpower, United's second largest stockholder, own 0.6 per cent of the voting stock of Consolidated Edison. This makes a combined total of 3.6 per cent.

Under its recent 11(e) plan Niagara Hudson proposes to distribute its 1.5 per cent interest to its stockholders.

cated on the Eastern Seaboard and adjoining areas. United has been, and still is, the largest stockholder in UGI, Niagara Hudson and Columbia Gas, and the extent of its voting power is attested by the fact that of the total votes cast at the annual meetings of its subsidiaries, United's holdings have amounted to over 35 per cent in UGI, about 19 per cent in Public Service, 30 per cent in Niagara Hudson, and 28 per cent in Columbia Gas.[106] United and UGI have held over 40 per cent of the total voting stock of Public Service and cast over 50 per cent of the votes at the annual meetings of Public Service. The managements of the subsidiaries appear to have enjoyed the full confidence of United, for it has been United's policy to give the managements proxies for the voting stock it held in its subsidiaries. It is rather significant in this connection that although United did not vote its stock at the 1941 meetings of its subsidiaries,[107] two representatives of United nevertheless appeared at those meetings so as to avoid any implication of "mistrust in the management" and to have the proxies available if needed for purposes of a quorum.

The organization of United also resulted in closer personal relationships between the bankers who organized United and the subsidiaries of United, as well as among the subsidiary companies themselves. The bankers constituted a majority of United's board of directors through the first part of 1938. Following the organization of United, they were represented on the board of Niagara Hudson and increased their previous representation on the boards of UGI, Public Service and Columbia Gas; and interlocking directorships were established between United and its subsidiaries as well as among the subsidiary companies themselves. We are aware that interlocking directorships between United and its subsidiaries and the bankers' representation on the board of United no longer exist. The record shows, however, that the cessation of these relationships was the result of voluntary resignations and does not necessarily suggest the waning of United's influence and that of its organizers.[108] The resignations themselves are no positive indication that control or authority has ceased. Our experience tends to show that they sometimes persist.[109]

It therefore appears doubtful to us that upon the consummation of the plan United will cease to be a holding company as defined in the act and within the holding company system of which it is presently a part. If we approved the plan we believe it would be necessary for us to institute further proceedings for the purpose of determining whether the actual or latent power by United to exercise a con-

[106] United appears to have voted its Columbia Gas stock only in 1939 and 1940.

[107] The management of United felt that voting of the stock would be inconsistent with terms of the 11(e) plan, which provides for the temporary suspension of the power to vote the securities of its subsidiaries.

[108] See discussion *supra*, under subheading "Banker control and interlocking directorships."

[109] This is illustrated in the case of United itself. See Public Service Corp. of New Jersey v. Securities and Exchange Commission (1942) 129 F(2d) 899, 45 PUR(NS) 350; Morgan Stanley & Co. v. Securities and Exchange Commission (1942) 126 F(2d) 325, 43 PUR(NS) 240. See also American Gas & E. Co. v. Securities and Exchange Commission (1943) — US App DC —, 49 PUR(NS) 150, 134 F(2d) 633, cert. den. (1943) — US —, 87 L ed —, 63 S Ct 1318.

trolling influence over its subsidiaries has in fact ceased to exist.[110] Though we cannot now predict with certainty what the result of these proceedings would be, it is sufficient that on the basis of the present record such proceedings will be necessary.

We have determined that United's continued existence constitutes an undue and unnecessary complexity in its holding company system. We are required by statute to direct United to take such action as will "ensure that it cease to be part of such holding company system, and United's plan provides us with no assurance in this respect. If, as United contends, divestment of control is an appropriate means of compliance with § 11(b)(2), such divestment must be definite and final and not provisional and contingent. United's plan, however, is replete with uncertainties and, upon its consummation, it would be necessary for us to conduct further time consuming proceedings. This is recognized by United itself, for, as one of its witnesses has stated, an order terminating United's registration under § 5(d) might be appropriately conditioned by us, directing United to file periodic reports with this Commission to permit periodic examinations into the question of control and to compel United to reregister as a holding company under the act if, as the plan unfolds and the consequences become clearer, we should find such action necessary.[111] Neither § 11(b)(2) nor § 11(e) could have intended so doubtful a method of compliance. United's plan therefore must be rejected.

We were faced with a similar problem in the Engineers Case.[112] We there held that a divestment order under § 11(b)(1) required more than a reduction to less than 10 per cent. We said there:

"Second, proceedings under § 2(a)(8) are not designed for the purpose suggested by the respondents, which would make them ancillary to § 11(b)(1) proceedings and would, in effect, convert them into a means of obstructing and interminably delaying § 11(b)(1) proceedings." . . .

"Similarly, Engineers has no substantive right to indulge in proceedings under § 2(a)(8). That section permits an application to be filed by a holding company as well as by a company in respect of which the order is to be entered, because it may well be an advantage to a holding company not to have certain responsibilities which it would otherwise have in respect of a company which is prima facie a subsidiary under the act. The issue presented in such a proceeding is whether or not there is control or susceptibility to controlling influences

[110] See Public Service Corp. of New Jersey v. Securities and Exchange Commision, *supra*, footnote 109, cert. den. (1942) 317 US 691, 87 L ed —, 63 S Ct 266; Detroit Edison Co. v. Securities and Exchange Commission (1941) 119 F(2d) 730, 39 PUR(NS) 193; American Gas & E. Co. v. Securities and Exchange Commission, *supra*, footnote 109.

[111] John J. Burns, a director and general counsel of United stated on cross-examination: "I would imagine if there were a declaration that we were no longer a holding company it could be under a set of conditions one of which would include periodic reports to your division; second, an examination at stated intervals to go into the question of control; and, thirdly, a provision that automatically that declaration would become ineffective and we would be required to register, and we would agree to that so that you would have a basis of consented jurisdiction—if certain things happen."

[112] See Re Engineers Pub. Service Co. (1941) Holding Company Act Release No. 2897, 9 SEC 764, 795, 40 PUR(NS) 1, 29.

in fact, and does not merely relate to the percentage of voting securities held. It has frequently been a most troublesome question, necessitating the most thorough exploration of historical and potential relationships between the companies involved. Favorable action on the application cannot determine the issue for all time, but must by reason of its very nature be conditional and temporary—a declaration of present status under existing circumstances, subject to change with any material change of circumstances. Congress cannot be thought to have intended any such inconclusive disposition of questions under § 11 (b) (1), which calls not only for finality of action but also for a promptness of action which would be precluded by the injection of § 2(a)(8) proceedings wherever divestment of a subsidiary's securities is involved."

We cannot approve United's 11(e) plan for the additional reason that it provides no assurance that it will be carried out with reasonable promptness. The plan states that the reduction in portfolio securities will be carried through as soon as "such securities may be sold, exchanged or otherwise disposed of advantageously to the corporation." During the hearing it was conceded that the management of United had no specific plan for the divestment of its holdings in its subsidiaries; nor has the management been able to tell us how soon dispositions will begin under the plan or when the entire reduction program will be completed. Dispositions will take place only when they are deemed beneficial by United's management, and thus consummation of the plan may be deferred to some remote date in the future.[113] All that the directors of United have been able to state is that the two one-year periods provided in § 11(c) for compliance with orders under § 11(b) would not be sufficient to carry out in full its 11(e) plan. In short, therefore, United requests that we approve a plan which is not intended to be carried into effect at the present time or within the period contemplated by the statute.

Since November 15, 1938, when we were first advised of United's intentions to reduce its holdings in its subsidiaries below 10 per cent, United considered three methods of disposition: (1) sales on the open market; (2) exchanges for portfolio securities of other companies; and (3) distribution among its own stockholders. The first method, as we have seen, was actually employed to a limited extent. In 1939 United sold 17,900 shares of Niagara Hudson and 13,500 shares of Columbia Gas. These sales

[113] George H. Howard, President of United, testified on cross-examination:

Q. Then the management at the present time has no specific plan for divestment?

A. We have not at this moment a specific plan.

Q. Do you foresee, any time in the immediate future, Mr. Howard, when the company will be in a position, or when present circumstances which the management has been considering will change so as to enable the management, to adopt a specific plan for the divestment of these securities?

A. It is, I think, impossible in the circumstances in which we live today to predict one month or several months ahead because it seems to me that we are daily becoming more and more involved in the war situation, which greatly complicates every one of these problems which we have been facing, and at this moment do face, in The United Corporation.

Q. Then there is no telling when the management will decide that the time is advantageous for divesting itself of these securities?

A. No, there is not, and it was for that very reason that it seemed to us that the plan which we have proposed to you might solve that situation.

reduced United's holdings by about 0.2 per cent in the former and by less than 0.1 per cent in the latter. The failure to make further dispositions by sale on the open market was due to the decision of United's directors not to sell its portfolio securities below their restated value on the books of United. This decision was prompted by the fact that sales at less than restated value would result in a book loss which would be charged against earned surplus. Since the market value of the securities of both Niagara Hudson and Columbia Gas fell below the restated value, sales of those securities were discontinued.[114]

This policy of United has foreclosed any reduction of its holdings in its subsidiaries by sales in the market. As of March 31, 1942, the restated value of United's holdings in these companies ranged from about 2½ to 6 times their market value.[115] United has indicated no intention to abandon its policy of not making sales below the restated value. Therefore it is clear that no market sales are contemplated at this time or in the reasonably foreseeable future. Indeed, United's management has stated that it is unable to approximate when circumstances might become advantageous to resume such sales.

During 1940 United also canvassed the possibility of exchanging some of its portfolio securities for securities held by other companies comparable as to book value, earnings, and coverage.[116] However, negotiations were not fruitful.[117] One of United's witnesses stated, "All during this period, there was a great desire but very little in the way of a concrete suggestion." In general, United's management, while believing that exchanges may

[114] The combined sales price for the Niagara Hudson and Columbia Gas securities was $7,163 in excess of their restated value.

[115] The market value of United's common stock in its four subsidiaries as of March 31, 1942, in contrast to their restated value on United's books was:

Name of Company	Shares Held	Restated Value	Market Value
UGI	6,066,223	$64,453,619	$24,264,892
Public Service	988,271	32,118,807	10,994,514
Niagara Hudson	2,333,107*	16,915,025	3,208,022
Columbia Gas	2,410,856	18,985,491	3,013,507

* United also holds 145,530 Class "B" option warrants for Niagara Hudson common. These warrants are carried on United's books at $145,530. Their market value as of March 31, 1942, was $18,191.

[116] Although there was no fixed policy to limit exchanges to utility securities, the management of United felt that more "equitable" exchanges could be made for utility securities because of "the chances of appreciation."

[117] The late Floyd L. Carlisle, then a director of United and of Niagara Hudson, discussed the question of exchanges with The North American Company but without any result. No particular stock was mentioned, since the discussion hardly passed the initial stages. Negotiations were also begun with officers of General Electric Company to exchange some of United's holdings in UGI and Public Service for securities held in an employee pension fund of General Electric. Securities in this fund included stocks of public utility operating companies such as those of Boston Edison Company, Consolidated Edison, Consolidated Gas, Electric Light and Power Company of Baltimore. (United owns 1.5 per cent of the voting stock in Consolidated Edison and 2.8 per cent of the voting securities in the last-named company.) In the course of the discussions it became apparent to the officials of General Electric that any exchange would not be desirable from their point of view because of tax considerations. Negotiations were also begun with representatives of the Mellon interests in Pittsburgh, and discussions were held from time to time with people in the financial community, but with no tangible results.

yet be possible, cannot at the present time estimate when such exchanges might become advantageous to United.

United also considered the possibility of distributing part of its portfolio to its own security holders as a means of reducing its holdings in its subsidiaries below 10 per cent, but United has been unable to determine the basis or a formula for such distribution. During the hearing it was stated that the management of United believes that a "happy formula" could be worked out, but could not state when such a formula would be discovered.

It is obvious from the foregoing that even if the plan otherwise presented a proper method of compliance —and we have indicated that it does not—we could not approve a plan whose consummation may not take place until some remote future time. Section 11(b) expressly provides that compliance with its provisions must be effectuated "as soon as practicable." United's plan, however, is to be carried out only when and if United is disposed to carry it out. We doubt whether such a proposal is contemplated by § 11 when it speaks of a plan for the purpose of enabling holding companies to comply with § 11. In any event, we are certain that Congress did not intend to permit such an indefinitely extended period for compliance with § 11(b)(2). Compliance with the statute is obligatory and cannot be made subject to the convenience of any company. Todd v. Securities and Exchange Commission (1943) 137 F(2d) 475.

Cognizant of the length of time that may elapse before all necessary dispositions will be completed, United proposes that pending consummation of the reduction program, it will refrain from voting the securities it now holds in its subsidiaries, save with the express "permission" of this Commission.[118] United believes that through this device its subsidiaries will be insulated against "possible control" in the meantime.

The plan does not specify the circumstances under which United might propose to vote its holdings in its subsidiaries or what we would be required to consider in the event United makes such a proposal. During the hearing, however, it became evident that United did not deem it advisable to relinquish absolutely the right to vote. For example, United indicated that it might wish to vote its holdings in its subsidiaries on questions relating to financing; charter amendment, or any matter requiring more than a majority vote; or where a particular officer of a subsidiary might be ousted and United believed him to be competent. In such situations and others of equal importance, United would come before this Commission and set forth the facts. The Commission would not be asked to pass upon the merits of the particular matter involved, but only to determine whether voting by United would be tantamount to exercising control or a con-

[118] We note that the plan as filed provided generally that United will not vote its holdings in its subsidiaries. During the hearing witnesses for United and its counsel stated that the reduction in portfolio was the basic feature of the plan and that the suspension or "sterilization" of voting was temporary and incidental, to remain effective until United reduces its holdings below 10 per cent. We have, therefore, considered this phase of the plan on the basis of their interpretations.

[119] We do not deem it necessary to consider whether this would in fact be the issue be-

trolling influence.[119] If we resolved the issue in the affirmative, United might decide not to vote. In the event that United should decide to vote in spite of our determination, we might require United to reregister as a holding company. United thus retains its present voting power and the control and prestige which flow therefrom. The decision to vote remains, as heretofore, subject to United's discretion and convenience. United would make no change in its rights. A determination against it in the event it desired to vote would merely place United where it is now—subject to the act as a registered holding company. In return for this illusory advance towards compliance with the statute, the Commission would be required to assume the burden of trying the issue of control as often as United should choose to vote.[120] And indeed, we are not even informed whether after reregistering as a holding company under the act and voting on a particular matter, United believes we would be required to terminate the reregistration.

United also believes that it can adequately safeguard the interests of its stockholders without voting the stock of its subsidiaries. United would still be free to obtain information from its subsidiaries in the same manner as any other stockholder, and besides, it could exercise its right to vote if such action is deemed necessary. United has also stated that it would be free to convey to the managements of the subsidiaries its affirmative views on matters of policy, without attempting to "dictate or determine the policies of the underlying companies." It is evident, however, that United's purpose in communicating its views would be to influence the subsidiaries. In view of the past relationships of United to its subsidiaries, the presumption of control or controlling influence created under § 2(a)(7)(A) of the act, and United's discretion to vote its holdings when it so chooses, we cannot conclude that an expression of views regarding matters of policy would not be equivalent to a controlling influence.[121]

Finally, we cannot approve United's plan for the reason that we are un-

fore the Commission in the event of approval of the plan.

Furthermore we do not like the authority the plan proposes to give us, i. e., to tell United whether and when it may vote stock it owns and we do not think it appropriate that we have it. We do not attempt to predict that some unusual circumstances might not sometime occur where it would be more justifiable than in the present case.

[120] United also recognizes the possibility that because of its large holdings it might effectively exercise a veto power over any proposal requiring a two-thirds vote. This might occur, for instance, in the case of UGI where during the past ten years United's voting securities constituted over 35 per cent of the actual votes cast at the annual meetings. Under those circumstances the Commission might not have an opportunity to pass upon the question of controlling influence since United would not come to the Commission. It was said, however, regarding this matter "that a vigilant commission like this would be well informed, particularly when it is difficult to conjure up a situation where two-thirds vote is required that then UGI would not have to come down here and make an application or file a declaration." Under such circumstances, it was conceded that the Commission may on its own initiative investigate and require United to reregister as a holding company.

[121] See Detroit Edison Co v. Securities and Exchange Commission (1941) 119 F(2d) 730, 39 PUR(NS) 193, cert. den. (1941) 314 US 618, 86 L ed 497, 62 S Ct 105; American Gas & E. Co. v. Securities and Exchange Commission (1943) — US App DC —, 49 PUR(NS) 150, 134 F(2d) 633; cert. den. (1943) — US —, 87 L ed —, 63 S Ct 1318; Public Service Corp. of New Jersey v. Securities and Exchange Commission (1942) 129 F(2d) 899, 45 PUR(NS) 350, cert. den. (1942) 317 US 691, 87 L ed —, 63 S Ct 266.

able to find, as required by § 11(e), that the plan is "fair and equitable to the persons affected" thereby. We have previously determined that voting power is unfairly and inequitably distributed between the preferred and common stockholders of United, and the plan makes no provision for the redistribution of voting power. The plan perpetuates the virtual disfranchisement of the preferred stockholders and consequently is not fair and equitable to them.

The Remedy

We have thus far determined that we must deny approval of the plan filed by United and that the continued existence and corporate structure of United unduly and unnecessarily complicate the structure of the holding company system of which it is a part, and unfairly and inequitably distributes voting power among the security holders of that system. We have determined that the corporate structure of the United unfairly and inequitably distributes the voting power among the security holders of that company. The problem remains as to the appropriate remedy under § 11 (b)(2) to ensure the correction of this situation. It seems clear that dissolution would be appropriate in this case.[122] However, the management of United has stated many times that it is desirous of entering into the business of an investment company.[123] While, as we have seen, no substantial progress has been made in this direction, we are nevertheless not prepared to say that it is not a possible solution to the problems of this company under the act. The approach which United has adopted in its plan is, as we have indicated, not one which carries much hope that such a solution will be effected. Nevertheless, all the problems which we have raised will be effectively dealt with should United actually succeed in ceasing to be a holding company. Under all the circumstances of this case we have determined that we will withhold the issuance of a disolution order and will require only that United correct the inequitable distribution of voting power within its own company by recapitalizing with a single class of stock and that it shall cease to be a holding company.

We do not now deem it necessary to set forth the steps which are appropriate to cause United to cease to be a holding company. It is clear from our discussion of United's 11 (e) plan that no mere reduction in holdings below 10 per cent or to any specific percentage will be sufficient. Before we can make a finding that United has complied with the order and ceased to be a holding company it will be necessary for United to satisfy us that no control or controlling influence remains over its present statutory subsidiaries. In any case, with its capitalization reduced to a single class of stock, United will be in a position to distribute most or all of its portfolio holdings to its existing security holders.

Abandonment of United's present business as a public utility holding

[122] See Re International Hydro-Electric System (1942) Holding Company Act Release No. 3679; Re American Power & Light Co. (1942) Holding Company Act Release No. 3750, 46 PUR(NS) 321.

[123] The management of United has indicated that it does not wish to be head of an integrated system, and indeed, under our findings it cannot do so.

company and embarking upon a new type of business, whether that of investment company or any other type of business, involves a drastic change in the activities of the company. Such a change will devote the funds which security holders have invested to a purpose different from that for which they were contributed. It would seem necessary that United should consult its security holders before embarking on such a program. In the light of the existing maldistribution of voting power and for other reasons,[124] we believe no such program would be fair which does not require majority approval either of the present preferred and common stock voting by classes, or of the new common stock, should United choose to recapitalize on a one-stock basis before seeking stockholder approval of the proposed new venture. The literature soliciting such approval would, of course, be subject to our scrutiny.

An appropriate order will issue.

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[124] We note that United's present plan for its transformation into an investment company subject to the Investment Company Act of 1940 provides specifically for approval by a majority of the stockholders. During the hearing witnesses for United agreed that the plan should be changed and made subject to approval by class vote. Upon cross-examination George H. Howard testified as follows:

Q. Are you stating for the record, Mr. Howard, that notwithstanding this condition in the 11(e) plan you will not care to see it carried into effect if the preferred stockholders do object?

Mr. Smith: Let us go further than that and ask the question specifically,—does he or does he not object to a class vote on the plan?

Mr. Slater: All right.

The Witness: No, I do not, I am glad to have you make that very suggestion, because one of the things that we hoped very much in consulting the Commission was that you might have such suggestions as to this plan as might make it a better plan.

By Mr. Slater:

Q. Then you have no objection and you are speaking for the management, I assume, of The United Corporation, to making this plan subject to the approval of a majority of each class of stock outstanding of the United Corporation?

A. I personally have no objection. I have not consulted the directors, but I cannot imagine that their view would in any way be different from mine about that.

Likewise, John J. Burns testified on redirect examination as follows:

Q. You were interrogated to some extent as to the extent to which the application in question might or might not be deemed beneficial to the stockholders of The United Corporation or, on the other hand, the statutory subsidiaries of The United Corporation. Does or does not the plan provide that before the plan shall become effective, it shall be approved by a majority of the stockholders at a meeting of the stockholders to be called for that purpose?

A. It so provides.

Q. And you heard Mr. Howard's testimony yesterday to the effect that he would be willing to have a class vote on the plan, which I take it to mean, a vote by the common stockholders voting as a class, and a vote by the preference stockholders, voting as a class, each class to approve it by a majority vote. Do you agree with that proposal?

A. Yes, I will endorse that proposal.

Q. So that, with that change in the plan, this plan would be subject to ratification by each class of the corporation's stockholders?

A. Quite true.

Counsel for United also stated in its brief (p. 6) as follows:

"The effectiveness of the plan is made dependent not merely upon this Commission's approval, but also upon *the approval of the holders of a majority of the preference as well as of the common stock.*"

PENNSYLVANIA SUPERIOR COURT

City of Pittsburgh

v.

Pennsylvania Public Utility Commission et al.

(— Pa Super Ct —, 33 A(2d) 641.)

Procedure, § 11 — Dismissal of complaint — Lack of prosecution — Consolidated proceedings.

1. Dismissal of a rate complaint by a municipality for lack of prosecution does not constitute an abuse of discretion by the Commission if the Commission properly refused a merger of the city's proceeding with a proceeding instituted by the Commission and properly denied authority to the municipality to intervene in the Commission's proceedings, where the municipality followed such proceedings but offered no evidence and took no active part, p. 255.

Parties, § 18 — Intervention by municipality.

2. The Commission is not required to permit a municipality to intervene in Commission's proceedings, p. 255.

Appeal and review, § 46 — Scope of review — Procedural matters.

3. Questions of procedure, including the question whether parties should be allowed to intervene in one another's proceedings, are subordinate to the paramount functions of the Commission and should be left to its discretion so long as it observes the basic requirements designed for the protection of private as well as public interests, p. 255.

[July 16, 1943.]

APPEAL *by city from order of Commission dismissing complaint for want of prosecution; affirmed. For Commission decision, see (1942) 45 PUR(NS) 478.*

APPEARANCES: Anne X. Alpern, City Solicitor, and Leon Wald, Assistant City Solicitor, both of Pittsburgh, for appellant; Samuel Graff Miller, Senior Counsel, and Harry M. Showalter, Counsel, both of Harrisburg, for Pennsylvania Public Utility Commission; David Mitchell and Albert M. Calland, both of Pittsburgh, for Manufacturers Light & Heat Company.

KENWORTHEY, J.: This is an appeal by the city of Pittsburgh from the order of the Public Utility Commission in which the Commission dismissed appellant's complaint for want of prosecution. At the time the order was made there were pending before the Commission three proceedings against the Manufacturers Light and Heat Company. The first of these at Docket No. C–11380, Sub. 18, was a

blanket inquiry issued by the Commission in 1937 against every gas company in Pennsylvania. Appellant's complaint, at Docket No. C–13558, was filed June 17, 1941; in it appellant requested the Commission to enter upon a hearing concerning the lawfulness of certain proposed rates of the utility and to suspend the operation of said rates pending the hearing and decision. The third was the Commission's proceeding, at Docket No. C–13565, 43 PUR(NS) 318, inquiring into the lawfulness and reasonableness of the proposed rates.

[1–3] At the first hearing, counsel for the Commission stated the nature of these proceedings and that he had "no objection if the parties desire to have the proceedings consolidated for hearing." He indicated, however, that he thought appellant's complaint should be conducted with a separate record since it applied to some but less than all of the proposed increased rates. He said he wanted it clearly understood that appellant's proceeding was to be separate in legal contemplation. He said: "Just what is covered by the city of Pittsburgh's complaint, or what issue it may desire to raise in that complaint, of course, I do not know." Counsel for appellant acquiesced in this arrangement and said: "At least the city's case will follow as a separate case." The examiner then said: "The complaint of the city of Pittsburgh against the respondent will be heard separately." It seems to have been mutually understood that this arrangement should continue until and unless the Commission allowed appellant to intervene in its own proceeding.

Appellant petitioned for leave but the Commission refused to allow it to intervene.

There were apparently sixteen hearings. Although there is a conflict as to the number at which appellant was represented, it was represented at some of the earlier hearings but not at the later ones. Counsel for appellant took no part in the proceedings by the examination of witnesses and offered no evidence.

On motion of the utility made at the last hearing, the Commission subsequently issued a rule on appellant to show cause why its complaint should not be dismissed for lack of prosecution. In its answer, appellant explained its failure to offer any evidence or to take active part in the proceedings on the ground that the Commission's evidence was in elaborate detail and was adequate to meet all of the questions which were involved; and it avers the proceedings were closely followed and transcripts of the record were carefully studied and that "the city of Pittsburgh hereby moves your Commission to adopt as the record of the proceedings at No. C–13558, the record of the proceedings before your Commission at No. C–13565 and C–11380."

In its order, the Commission not only dismissed the complaint for lack of prosecution, but refused the motion of appellant that the record of the Commission's cases be incorporated by reference into appellant's case.

We think the solution of the problem whether the Commission abused its discretion in dismissing appellant's complaint depends upon the more fundamental problem whether the Commission abused its discretion in refusing appellant's motions for inter-

vention or consolidation. If the Commission was bound to merge the proceedings, it clearly had no right to eliminate appellant until it adjudicated the merits. If, on the other hand, the Commission's action in refusing the merger should be sustained, appellant is in the position of having filed a complaint in June, 1941, pursuant to which it had taken no steps whatever until the Commission's order dismissing it was filed on June 16, 1942, 45 PUR(NS) 478.

In our opinion, there is nothing in the Public Utility Law or in the decisions construing it which requires the Commission to permit appellant to intervene in the Commission's proceedings and the order of the Commission must be affirmed.

The notion is prevalent that a municipality has the right to intervene and represent its citizens in every rate inquiry affecting them. But the Public Utility Law reposes the responsibility for the regulation of utilities and the preservation and protection of the rights of the public involved in the Commission, not in municipalities. Questions of procedure, including the question whether parties should be allowed to intervene in one another's proceedings, are subordinate to the paramount functions of the Commission and should be left to its discretion so long, of course, as it observes the basic requirements designed for the protection of private as well as public interest. See Federal Communications Commission v. Pottsville Broadcasting Co. (1940) 309 US 134, 138, 84 L ed 656, 33 PUR(NS) 75, 60 S Ct 437. Perhaps the Commission should adopt the practice of permitting municipalities to intervene as representatives of interested consumers, but no applicable rule of the Commission has been called to our attention and in the absence of one appellant's standing is that of an individual consumer merely. And to what extent consumers, whose intervention is bound to impose a hampering restriction upon the functioning of the administrative process, should be permitted to intervene is within the sound discretion of the Commission to be exercised in each individual case.

There is nothing in this record to indicate that appellant is in a position different from that of any other of the large number of consumers served by the utility involved except, perhaps, that its complaint touched off the Commission's proceeding at Docket No. C–13565, *supra*. Having done nothing more than filed the complaint and "followed" the proceedings, it is in no better position than the others to demand the right to intervene. In effect, it has done no more than other consumers who have sat by and watched the Commission carry out the functions and duties imposed upon it by the law. Its rights rise no higher than the rights of the others and against the order which the Commission ultimately makes it will have such remedy or remedies as the law allows to any consumer injured thereby.

The order is affirmed, costs to be paid by appellant.

Kuhlman Products

TRANSFORMING AND USING THE POWER THAT YOU PRODUCE

In almost every locality in America where you see the brightly lighted war plants, where, day and night, you hear the hum and clatter of machinery on production, Kuhlman Transformers are at work. Kuhlman Transformers are built to stand up on the job year after year with a minimum of maintenance. The transformer shown here, built for use with a Type AA Detroit Rocking Electric Furnace (see below), is a 531 KVA Single Phase high reactance arc furnace transformer equipped with external tap changers for adjusting both the voltage and reactance values.

The Detroit Electric Furnace Division of Kuhlman Electric Company is playing an especially active role in America's Battle of production. Using electricity rather than fuel, these fast-melting efficient furnaces are helping conserve the nation's fuel and metal deposits. They are an important factor in speeding up the production of essential war needs in ferrous and non-ferrous foundries and casting shops.

Write for complete facts regarding postwar load-building, revenue-producing opportunities.

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Industrial Progress

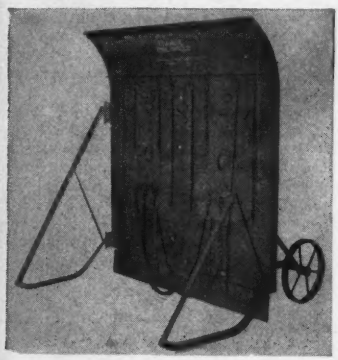
Selected information about products, supplies and services offered by manufacturers. Also announcements of new literature and changes in personnel.

Equipment Notes

Foamite Fire Shield Perfected

American-La France-Foamite Corporation, Elmira, N. Y., announces the perfection of the "Foamite Fire Shield," for fighting fires out in the open, in tank farm, refinery, and "particularly for use on airplane landing fields."

The shield, built for service, is of sheet steel, reinforced with angle irons. It is 79½ in.



For Fighting Fires in Open

high by 75¾ in. wide over-all. Between the front and back plates of the shield is an insulating mineral wool blanket, one inch thick, capable of withstanding a temperature of 1,200° Fahrenheit, according to the manufacturer.

The three observation ports and the four nozzle ports are each equipped with pivoted cover doors controlled from the rear of the shield. Sturdy anchoring chains are provided for securing playpipes in place.

Two short handles, normally hanging down, may be used to maneuver the fire shield at the scene of the fire.

30,000-Volt Portable Oil Tester Announced by G-E

An improved 30,000-volt portable test set for the convenient and rapid testing of insulating liquids such as oil and Pyranol has been announced by the General Electric Company. The set, designed for indoor service, provides smoothly variable test voltage from 0 to 30,000 volts on single-phase, 115-or 230-volt, 25- or 60-cycle circuits.

According to the manufacturer, this portable tester can be used to advantage in central stations, substations, industrial plants, and wherever frequent oil testing is required, saving both time and expense in checking the proper dielectric strength of insulating liquids.

The tester combines in a single unit a step-up transformer, a potentiometer which gradually raises the test voltage, a voltmeter to measure breakdown values, an automatic circuit breaker, and an oil testing receptacle. The control panel is inclined toward the operator, enabling him to read the voltmeter easily and accurately. As soon as the test sample breaks down, the low-voltage breaker automatically opens the circuit, preventing continuation of the arc and burning of the electrodes. Complete instructions for operation are included on the surface of the control panel. The oil testing receptacle is located at the rear of the control panel under a hinged safety guard with a glass window.

Catalogs and Bulletins

A-C Bulletin

In a 4-page bulletin, Allis-Chalmers Mfg. Co., Milwaukee, Wisc., outlines the benefits to industry of the new Ampac "400" a.c. welder.

A pictorial section shows for the first time the step-by-step construction and internal assembly of a continuously variable heavy-duty a.c. welder. Graphs compare idling loss and efficiency of the Ampac "400" with two of the best-known a.c. welders in 300 and 500 ampere sizes and with a typical d.c. welder. Complete electrical performance data on this unit at all loads are also given.

Copies of this bulletin, B-6302, may be obtained from Allis-Chalmers.

Goodrich Catalog

A new catalog section, No. 9425, on its line of Flexite rubber pouring buckets, for the safe and economical handling of acids, corrosives, and liquid high explosives, has just been

Catalogs & Bulletins (Cont'd)

issued by The B. F. Goodrich Company and is available upon request. The publication also describes Flexite rubber dippers, hard rubber funnels, and Anode Acid rubber gloves.

Among products described is a comparatively recent addition to the line, a rubber bucket developed, according to the manufacturer, especially for arsenals and shell loading plants. Made in a soft rubber compound of about 60 durometer hardness, the bucket is flexible enough so that it can be easily crushed and any solidified liquid cracked loose and readily removed. The bucket will not crack or break during rough usage. Secure anchorage of handles and reinforced gripping bead at the base prevent spilling or injury to workmen.

Catalog-Directory Classifies Visual Training Aids

A new type catalog-directory, classifying a wide range of visual training aids now available for the electrical field, is announced by The Jam Handy Organization, 2900 E. Grand Blvd., Detroit 2, Mich.

By a system of indexing, cross-indexing, and classifying many varied teaching slidefilms and motion pictures for electrical training purposes, the instructor is enabled to quickly locate the subject wanted. In addition, "previews" of each slidefilm and motion picture are provided in the form of large, vivid illustrations of sequences reproduced directly from the films.

The new catalog-directory is printed in color, comprises 80 pages, and contains much detailed information, including the number of individual frames or pictures in each slidefilm subject, and in each series. It also gives a brief outline of the material they contain.

Copies of the catalog-directory may be had without charge upon request.

Bulletin Explains Cold Cathode Lighting

A new bulletin, No. 162, issued by the Acme Electric & Mfg. Co., Cuba, N. Y., describes the differences between cold cathode lighting and fluorescent lighting. This bulletin briefly discusses the utility, adaptability, color harmonics, safety, efficiency, and the future possibilities of the continuous tube (cold cathode) light source.

Eight installations of this form of lighting in retail stores, factories, and business offices are also illustrated. Specifications and dimensions of four standard industrial type cold cathode lighting transformers and twelve commercial type cold cathode lighting transformers are included.

Robins Bulletin

Robins Conveyors Incorporated, manufacturers and erectors of machinery and entire systems for conveying, hoisting, storing, crushing, sizing, and distributing coal, coke, ores, aggregates, and other bulk materials announces the publication of Bulletin No. 125. The booklet contains an illustrated and descriptive presentation of some of the machinery and systems manufactured and erected by Robins.

Application of Technical War Developments to Postwar Plans

Publication of a new business review monthly has been announced by J. J. Berliner & Staff, 225 Fifth Avenue, New York 10, N. Y., under the title of "New Business Developments Service."

The publication presents reports of new products, new equipment, new methods and industrial developments which are currently modifying present manufacturing techniques.

Among the various business fields covered by the new publication are engineering, aircraft, building materials, furniture, rubber plastics, resins, chemicals, textiles, clothing and footwear, metallurgy, heating and ventilating, glass, automotives, food, salvage and reconversion and the like. Subscription is $18 per year.

"Communication Survey Chart"

Executone, Inc., has recently issued a "Communication-Survey Chart." Through the medium of this chart, the executive is able to analyze his communication requirements, and, at the same time, obtain from Executone's Engineering Department a detailed proposal outlining a communication system planned to his individual requirements.

From the standpoint of switching arrangements, noise levels, and other operating features, communication needs are rarely the same, for this reason Executone's equipment is not presented as "packaged merchandise" in the usual catalog form.

Based on the completion of this survey, an Executone proposal outlining the details of the recommended system, is submitted to the buyer without obligation.

Copies of the chart may be obtained from the manufacturer, 415 Lexington Ave., New York 17, N. Y.

Pipe and Tube Bending Handbook

The Copper & Brass Research Association, 420 Lexington Avenue, New York 17, New York, announces the publication of "The Pipe and Tube Bending Handbook," containing methods for bending pipe and tubes of brass, copper, and related alloys.

Manufacturers' Notes

Davey Compressor Wins "E"

Paul H. Davey, president of Davey Compressor Company, Kent, Ohio, announced recently that the Army-Navy "E" award for outstanding war production has been awarded to the company.

General Electric Forms Credit Corporation

The formation of the General Electric Credit Corporation, an investment company organized under the New York State Banking Law, has been announced by the General Electric Company. The new organization will

Manufacturers' Notes (Cont'd)

broaden the scope of activities carried on since 1933 by the General Electric Contracts Corporation, and will include the business of the latter company which was principally financing the sale of consumer goods.

Management of the new company will be the same as that of the General Electric Contracts Corporation of which G. F. Mosher is president. The main office of the new corporation will be at 570 Lexington Avenue, New York City, and branches will be operated in other principal cities.

The immediate function of the new investment company will be to provide financing for war construction and production work in connection with contracts which involve the use of products of General Electric and its associated companies, or parts produced by others for incorporation in such war products.

NAM Holds Annual Convention

The second War Congress of American Industry, 48th Annual Convention of the National Association of Manufacturers, will be held December 8th, 9th and 10th, at the Waldorf-Astoria Hotel, New York, N. Y. The theme of the Congress this year will be "Production for Victory and Postwar Jobs."

Among those scheduled to speak are Donald M. Nelson, chairman of the War Production Board; Joseph D. Eastman, director of ODT; Wilfred Sykes, president of Inland Steel Company, Chicago, and Tom M. Girdler, chairman of the board of Consolidated-Vultee Aircraft Corp. and chairman of Republic Steel Corp.

National Postal Meter Co. Establishes Washington Branch

The National Postal Meter Company, Inc., announces the establishment of a company branch in Washington at 1419 "Eye" St., N. W., for the convenience of the United States government and commercial users of their products in the District of Columbia and Baltimore area.

A. P. Gainer, who has been appointed branch manager, has been representing National Postal Meter in this territory for some time and has had wide experience in the mail-room equipment field.

G-E Division Moves

The resin and insulation materials division of General Electric's Appliance and Merchandise Department recently moved its sales and order service headquarters office to Schenectady, N. Y., from Bridgeport, Conn.

flammable transformer have great inherent strength. Pennsylvania circular coils possess the maximum inherent mechanical and electrical strength!

Askarel transformers develop high pressures inside the tank because of the sealed, pressure-tight, tank construction necessary to prevent loss of Askarel through evaporation. Sturdy Uni-Row radiators on Pennsylvania Askarel transformers are designed to meet these high pressures. As rugged as the tanks themselves, these radiators are premanently welded in position and tested at 100 lbs. pressure. Radiators are spaced around the tanks so that each tube of each radiator is easily sandblasted, cleaned and painted.

3000 kva, ASKAREL, 3 phase, 25 cycles.

Self-Reclosing Safety Valve Relieves Excessive Pressures.

Safety valves are mounted on the covers of all Askarel transformers above 25 kva, and operate in case abnormal pressures exceeding 12 pounds per square inch develop inside the tanks. These safety valves are self-reclosing to prevent foreign matter from entering the transformers.

333 kva, ASKAREL, 1 phase, 60 cycles.

25 kva, ASKAREL,
1 phase, 60 cycles.

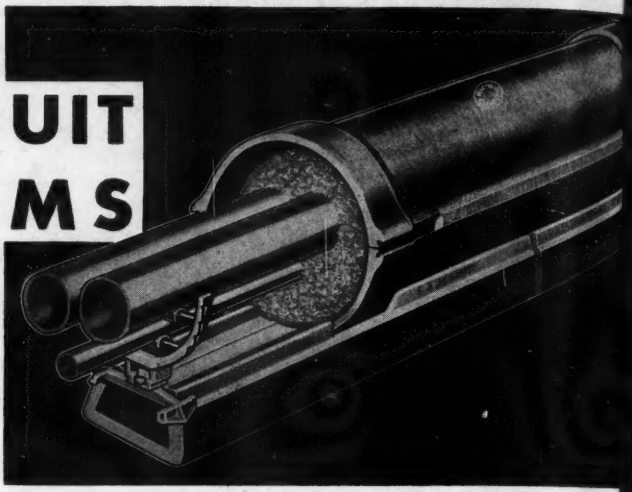
Pennsylvania
TRANSFORMER COMPANY
PITTSBURGH, PENNSYLVANIA

Pennsylvania TRANSFORMERS

- Since Askarel Transformers are non-inflammable and nonexplosive, they may be installed indoors at the load centers without a vault or fire door.
- Since Askarel is nonsludging and nonoxidizing, and the transformer tanks are pressure-tight and moisture-proof, Askarel transformers may be installed outdoors as well as indoors.

TILE CONDUIT SYSTEMS

FOR UNDERGROUND STEAM LINES



Ric-wiL, pioneer in the tile conduit field, has served the country's needs on underground steam protection with outstanding leadership since 1910. Today, with material supply, production facilities, and plant personnel subjected to severe pressure, it is a point of pride with us that traditional standards of quality are being scrupulously maintained. In spite of heavy demands, we are well equipped to make quick deliveries on all sizes and types of Ric-wiL Tile Conduit, as well as on our complete line of Prefabricated Insulated Pipe Units . . . Conduit illustrated is Ric-wiL Standard Tile with filler insulation. Heavy duty Super-Tile and Cast Iron are also available for this type, and all are adaptable to single or multiple pipe systems.

RIC-WIL TILE CONDUIT FOR OIL OR PROCESS LIQUIDS

In this system, conduit is insulated from the exterior, but individual lines are not insulated from one another. A steam or hot water line can thus maintain temperature to keep liquids flowing in the other lines. Insulation is a diatomaceous earth lining, moulded and keyed to inside circumference of tile. May also be used with fibre insulation for steam heat, power and superheated steam. Applicable to Super-Tile and Cast Iron.

RIC-WIL PREFABRICATED INSULATED PIPE CONDUIT

Completely factory-prefabricated units including pipe and insulation as specified are furnished in convenient 21 foot lengths for speedy installation. Conduit is helical corrugated, coated with asphalt and wrapped with asphalt-saturated asbestos felt. This system is also available for oil or process liquids, and is adaptable to overhead as well as underground installations.

Many other types of Ric-wil conduit are available to meet individual requirements. Write for complete information.

RIC-WIL INSULATED PIPE CONDUIT SYSTEMS
THE RIC-WIL COMPANY · CLEVELAND, OHIO
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• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design, and construction. ‹ ‹ ‹

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For once,

adio Tokyo was

almost right

first time it happened was in the Sol-
ons. Thirty-six Jap bombers left their
e to attack one American battleship.
e came back. Radio Tokyo whimpered
the warship evidently carried "six-inch
chine guns" . . . and for once they were
ost right.

the Navy's new twin mount five-inch
, whipping gracefully 'round its cradle,
es out every five seconds . . . lashes out
pulverizes, leaving no survivors and
cripples. It's more than anti-aircraft. It's
craft *hunting*.

nsolidated Steel Corporation manufac-
es this weapon under contract to the
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erances of 2/10,000 of an inch, volume
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n and women of Consolidated every
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d when tomorrow comes, when the last
emy plane is smashed, the ingenuity and
ill of Consolidated Steel craftsmen will
turn to the fabrication of peacetime steel,
cking out, welcoming, and *handling* the
ough" jobs of postwar construction.

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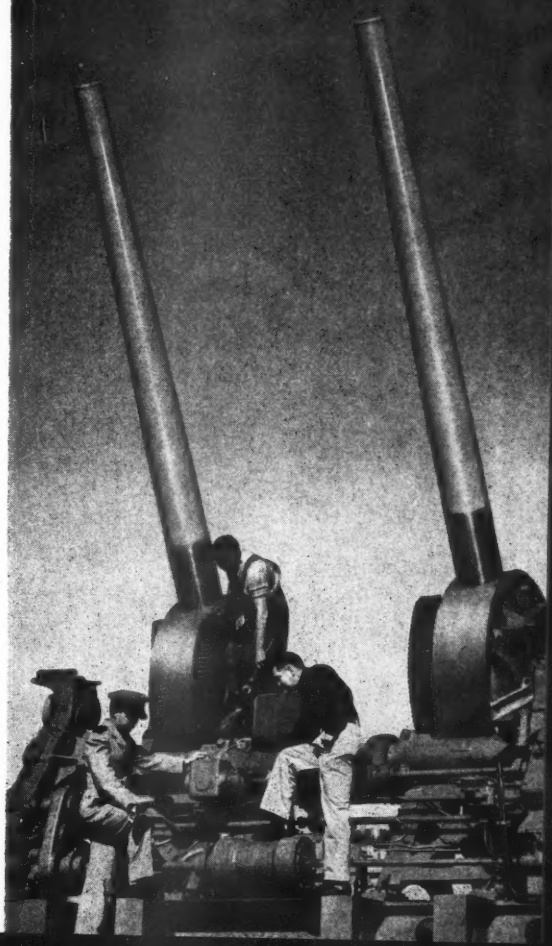
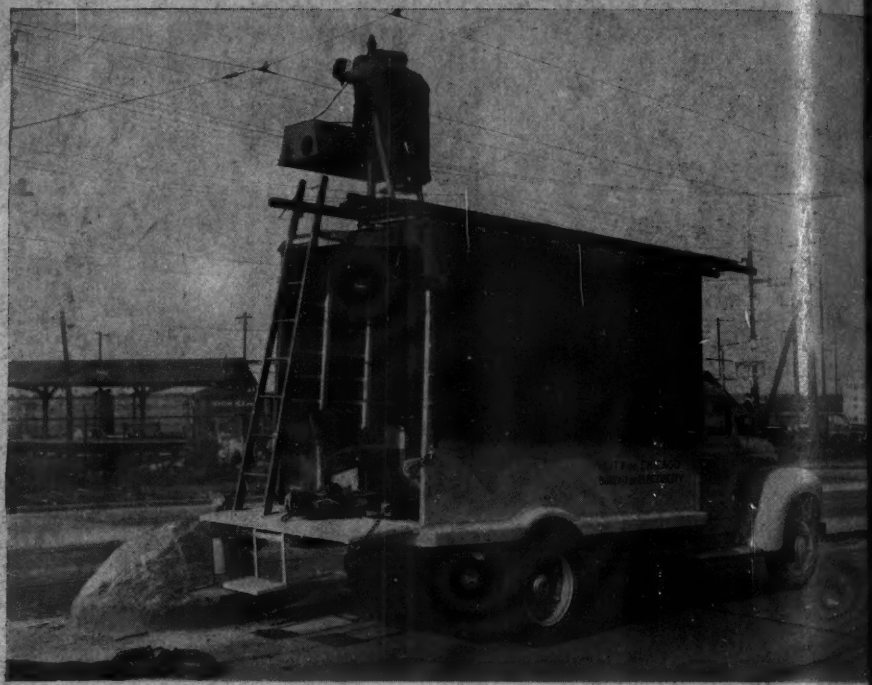
NG BEACH, WILMINGTON, CALIFORNIA; ORANGE, TEXAS

Navy 5-inch twin mount anti-aircraft gun produced in volume by Consolidated Steel Corporation, Ltd.





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